

Irrigation and M&I  
Contract No. I75r-180AD

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES  
AND  
KAWEAH DELTA WATER CONSERVATION DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM FRIANT DIVISION AND  
FOR FACILITIES REPAYMENT

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1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 Central Valley Project, California

5 CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 KAWEAH DELTA WATER CONSERVATION DISTRICT  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM FRIANT DIVISION AND  
10 FACILITIES REPAYMENT

11 THIS CONTRACT, made this 10<sup>th</sup> day of December, 2010, is entered  
12 into pursuant to the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary  
13 thereto, including but not limited to: the Act of August 26, 1937 (50 Stat. 844), as amended and  
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70  
15 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100  
16 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and Title  
17 X, Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), also referred to as the San Joaquin  
18 River Restoration Settlement Act hereinafter referred to as SJRRSA, all collectively hereinafter  
19 referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,  
20 hereinafter referred to as the United States and KAWEAH DELTA WATER CONSERVATION  
21 DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California,  
22 duly organized, existing, and acting pursuant to the laws thereof, with its principal place of  
23 business in California;

24 WITNESSETH, That

EXPLANATORY RECITALS

[1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2<sup>nd</sup>] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant Division Facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

[3<sup>rd</sup>] WHEREAS, the United States and the Contractor, together with Ivanhoe Irrigation District, entered into Contract Number I75r-1809-LTR1A which established terms for the assignment of 1,200 acre-feet of Class 1 Water and 7,400 acre-feet of Class 2 Water from Ivanhoe Irrigation District, delivered to Ivanhoe Irrigation District under its Contract No. I75r-1809-LTR1 (“Existing Contract”), to the Contractor for delivery of Project Water from the Friant Division from March 1, 2010 through February 28, 2026, and is herein referred to as the “Assignment Contract”; and

[4<sup>th</sup>] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the United States has acquired water rights and other rights to the flows of the San Joaquin River, including without limitation the permits issued as the result of Decision 935 by the California

46 State Water Resource Control Board and the contracts described in subdivision (n) of Article 3  
47 of this Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers  
48 Project Water stored or flowing through Millerton Lake in accordance with State and Federal law  
49 for the benefit of Project Contractors in the Friant Division and for other specified Project  
50 purposes; and

51 [5th] WHEREAS, the water supplied to the Contractor pursuant to this Contract is  
52 Project Water developed through the exercise of the rights described in the fourth (<sup>th</sup>)  
53 Explanatory Recital of this Contract; and

54 [6th] WHEREAS, as a result of litigation entitled “Natural Resources Defense Council,  
55 et al. v Kirk Rogers, et al.” No. CIV-S-88-1658LLK/GGH, certain contractors from the Friant  
56 Division entered into a Stipulation of Settlement dated September 13, 2006, (the “Settlement”),  
57 which settlement prescribes a Restoration Goal and a Water Management Goal and which  
58 Settlement was subsequently confirmed and implemented through the SJRRSA; and

59 [7th] WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the  
60 Existing Contract to a repayment contract under subsection (d) of Section 9 of the Act of August  
61 4, 1939, no later than December 31, 2010, and further directs that such contract shall require the  
62 accelerated repayment of the Contractor’s allocated share of construction costs, either as a lump  
63 sum payment by January 31, 2011 or in annual installments by January 31, 2014, which funds  
64 will in turn be made available for implementation of the Settlement and SJRRSA, and which  
65 costs otherwise would have been payable through annual water rates, with full repayment by  
66 2030; and

67            [8<sup>th</sup>]    WHEREAS, such repayment of costs will assist the United States with  
68            implementation of actions required under the Settlement and the SJRRSA and provide the  
69            Contractor the benefits provided in Section 10010 of the SJRRSA; and

70            [9<sup>th</sup>]    WHEREAS, subsection (4) of Section 1 of the Act of July 2, 1956 (1956 Act)  
71            directs the Secretary to provide that the other party to any contract entered into pursuant to  
72            subsection (d) of Section 9 of the Act of August 4, 1939 (repayment contract) or pursuant to  
73            subsection (e) of Section 9 of the Act of August 4, 1939 (water service contract) shall “have the  
74            first right (to which the rights of the holders of any other type of irrigation water contract shall be  
75            subordinate) “to a stated share or quantity of the project’s available water supply for beneficial  
76            use on the irrigable lands within the boundaries of, or owned by, the party and a permanent right  
77            to such share or quantity upon completion of payment of the amount assigned for ultimate  
78            return” by the contractor subject to fulfillment of all obligations under the contract; and

79            [10<sup>th</sup>]    WHEREAS, among other things, this Contract includes provisions granting the  
80            Contractor the permanent right described in the ninth (9<sup>th</sup>) Explanatory Recital

81            [11<sup>th</sup>]    WHEREAS, the Contractor has demonstrated to the satisfaction of the  
82            Contracting Officer that the Contractor has utilized the Project Water supplies available to it for  
83            reasonable and beneficial use and/or has demonstrated projected future demand for water use  
84            such that the Contractor has the capability and expects to utilize fully for reasonable and  
85            beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;  
86            and

87 [12<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon  
88 by urban and agricultural areas within California for more than fifty (50) years and is considered  
89 by the Contractor as an essential portion of its water supply; and

90 [13<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project,  
91 including the Contractor's, depend upon the continued availability of water, including water  
92 service from the Central Valley Project; and

93 [14<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
94 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
95 Project for all Project purposes; and

96 [15<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
97 provide for reliable Project Water supplies; to control costs of those supplies; to achieve  
98 repayment of the Central Valley Project as required by law; to guard reasonably against Project  
99 Water shortages; to achieve a reasonable balance among competing demands for use of Project  
100 Water; and to comply with all applicable environmental statutes, all consistent with the legal  
101 obligations of the United States relative to the Central Valley Project; and

102 [16<sup>th</sup>] WHEREAS, any time during the Year the Contracting Officer determines that a  
103 need exists to evacuate water from Millerton Lake in order to prevent or minimize spill or to  
104 meet flood control criteria (currently referred to as "uncontrolled season"), taking into  
105 consideration, among other things, anticipated upstream reservoir operations and the most  
106 probable forecast of snowmelt and runoff projections for the upper San Joaquin River, Friant  
107 Division Project Contractors utilize a portion of their undependable Class 2 Water in their

108 service areas to, among other things, assist in the management and alleviation of groundwater  
109 overdraft in the Friant Division service area, provide opportunities for restoration of the San  
110 Joaquin River below Friant Dam, minimize flooding along the San Joaquin River, encourage  
111 optimal water management, and maximize the reasonable and beneficial use of the water; and

112 [17<sup>th</sup>] WHEREAS, the parties desire and intend that this Contract not provide a  
113 disincentive to the Friant Division Project Contractors continuing to carry out the beneficial  
114 activities set out in the Explanatory Recital immediately above; and

115 [18<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all  
116 of its obligations under the Assignment Contract.

117 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein  
118 contained, it is hereby mutually agreed by the parties hereto as follows:

119 DEFINITIONS

120 1. When used herein, unless otherwise distinctly expressed or manifestly  
121 incompatible with the intent of the parties as expressed in this Contract, the term:

122 (a) "Additional Capital Obligation" shall mean any additional construction  
123 costs or other capitalized costs incurred after the effective date of this Contract or not reflected in  
124 the Existing Capital Obligation as provided in Section 10010(a)(3)(B) of the SJRRSA and any  
125 amounts payable by Contractor as determined through the final adjustment described and  
126 required by Section 10010(b) of the SJRRSA;

127 (b) "Calendar Year" shall mean the period January 1 through December 31,  
128 both dates inclusive;

129 (c) "Charges" shall mean the payments required by Federal Reclamation law  
130 in addition to the Rates and Tiered Pricing Components specified in this Contract as determined  
131 annually by the Contracting Officer pursuant to this Contract and consistent with the SJRRSA;

132 (d) "Class 1 Water" shall mean that supply of water stored in or flowing  
133 through Millerton Lake which, subject to the contingencies hereinafter described in Articles 3,  
134 12, and 13 of this Contract, will be available for delivery from Millerton Lake and the  
135 Friant-Kern and Madera Canals as a dependable water supply during each Year;

136 (e) "Class 2 Water" shall mean that supply of water which can be made  
137 available subject to the contingencies hereinafter described in Articles 3, 12, and 13 of this  
138 Contract for delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to  
139 the supply of Class 1 Water. Because of its uncertainty as to availability and time of occurrence,  
140 such water will be undependable in character and will be furnished only if, as, and when it can be  
141 made available as determined by the Contracting Officer;

142 (f) "Condition of Shortage" shall mean a condition respecting the Project  
143 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the  
144 Contract Total;

145 (g) "Contracting Officer" shall mean the Secretary of the Interior's duly  
146 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law  
147 or regulation;

148 (h) "Contract Total" shall mean the maximum amount of Class 1 Water plus  
149 the maximum amount of Class 2 Water specified in subdivision (a) of Article 3 of this Contract

150 and is the stated share or quantity of the Project's available water supply to which the Contractor  
151 will have a permanent right in accordance with the 1956 Act and the terms of this Contract, upon  
152 the Contractor's complete payment of the Repayment Obligation, notwithstanding any  
153 Additional Capital Obligation that may later be established, which right shall not be disturbed so  
154 long as the Contractor fulfills all of its obligations under this Contract;

155 (i) "Contractor's Service Area" shall mean the area to which the Contractor is  
156 permitted to provide Project Water under this Contract as described in Exhibit "A" attached  
157 hereto, which may be modified from time to time in accordance with Article 36 of this Contract  
158 without amendment of this Contract;

159 (j) "CVPIA" shall mean the Central Valley Project Improvement Act, Title  
160 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

161 (k) "Eligible Lands" shall mean all lands to which Irrigation Water may be  
162 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982  
163 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

164 (l) "Excess Lands" shall mean all lands in excess of the limitations contained  
165 in Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal  
166 Reclamation law;

167 (m) "Existing Capital Obligation" shall mean the remaining amount of  
168 construction costs of the Contractor identified in the Central Valley Project Irrigation Water  
169 Rates and/or Municipal and Industrial Water Rates, respectively, dated January 25, 2007, as  
170 adjusted to reflect payments not reflected in such schedule, pursuant to Section 10010(a)(3)(A)

171 of the SJRRSA. The Contracting Officer has computed the Existing Capital Obligation in a  
172 manner consistent with the SJRRSA and such amount is set forth in Exhibits "C-1" and "C-2",  
173 incorporated herein by reference;

174 (n) "Financing Costs", for purposes of computing the reduction of certain  
175 charges as specified in subdivision (c) of Article 7 of this Contract, shall mean the difference  
176 between the net present value of the Existing Capital Obligation discounted using the full  
177 Treasury rate and the Existing Capital Obligation discounted using one-half the Treasury rate, as  
178 set forth in Section 10010(d)(3) of the SJRRA;

179 (o) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3)  
180 or 202(3) of the RRA, whichever is applicable;

181 (p) "Ineligible Lands" shall mean all lands to which Irrigation Water may not  
182 be delivered in accordance with Section 204 of the RRA;

183 (q) "Irrigation Full Cost Water Rate" shall have the same meaning as "full  
184 cost" as that term is used in Paragraph (3) of Section 202 of the RRA;

185 (r) "Irrigation Water" shall mean water made available from the Project that  
186 is used primarily in the production of agricultural crops or livestock, including domestic use  
187 incidental thereto, and watering of livestock;

188 (s) "Landholder" shall mean a party that directly or indirectly owns or leases  
189 nonexempt land, as provided in 43 CFR 426.2;

190 (t) "Long Term Historic Average" shall mean the average of the final forecast  
191 of Water Made Available to the Contractor pursuant to this Contract and the contract referenced  
192 in the third (3<sup>rd</sup>) Explanatory Recital of this Contract;

193 (u) "Municipal and Industrial (M&I) Water" shall mean water made available  
194 from the Project other than Irrigation Water made available to the Contractor. M&I Water shall  
195 include water used for human use and purposes such as the watering of landscaping or pasture  
196 for animals (e.g., horses) which are kept for personal enjoyment or water delivered to land  
197 holdings operated in units of less than five (5) acres unless the Contractor establishes to the  
198 satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a  
199 use described in subdivision (r) of this Article of this Contract;

200 (v) "M&I Full Cost Water Rate" shall mean the annual rate, which, as  
201 determined by the Contracting Officer, shall amortize the expenditures for construction allocable  
202 to Project M&I facilities in service, including, O&M deficits funded, less payments, over such  
203 periods as may be required under Federal Reclamation law with interest accruing from the dates  
204 such costs were first incurred plus the applicable rate for the O&M of such Project facilities.  
205 Interest rates used in the calculation of the M&I Full Cost Rate shall comply with the Interest  
206 Rate methodology contained in Section 202(3) (B) and (C) of the RRA;

207 (w) "Operation and Maintenance" or "O&M" shall mean normal and  
208 reasonable care, control, operation, repair, replacement (other than Capital replacement), and  
209 maintenance of Project facilities;

210 (x) "Operating Non-Federal Entity" shall mean the Friant Water Authority, or  
211 its successor, a Non-Federal entity, which has the obligation to operate and maintain all or a  
212 portion of the Friant Division Facilities pursuant to an agreement with the United States and  
213 which may have funding obligations with respect thereto;

214 (y) Omitted;

215 (z) "Project" shall mean the Central Valley Project owned by the United  
216 States and managed by the Department of the Interior, Bureau of Reclamation;

217 (aa) "Project Contractors" shall mean all parties who have a long-term water  
218 service contract or repayment contract for Project Water from the Project with the United States  
219 pursuant to Federal Reclamation law;

220 (bb) "Project Water" shall mean all water that is developed, diverted, stored, or  
221 delivered by the Secretary in accordance with the statutes authorizing the Project and in  
222 accordance with the terms and conditions of water rights acquired pursuant to California law;

223 (cc) "Rates" shall mean the payments for O&M costs as determined annually  
224 by the Contracting Officer in accordance with the then-existing applicable water ratesetting  
225 policies for the Project, as described in subdivision (a) of Article 7 of this Contract and  
226 illustrated in Exhibit "B", attached hereto;

227 (dd) "Recovered Water Account" shall mean the program, as defined in the  
228 Settlement, to make water available to all of the Friant Division Project Contractors who provide  
229 water to meet interim flows or restoration flows for the purpose of reducing or avoiding the  
230 impact of the interim flows and restoration flows on such contractors;

231 (ee) "Repayment Obligation", as provided in subdivision (a)(2)(A) of Article 7  
232 of this Contract, shall be the Existing Capital Obligation, as defined herein, discounted by  
233 one-half of the Treasury rate and computed consistent with the provisions of Section  
234 10010(a)(3)(A) of the SJRRSA to be paid as either a lump sum payment by January 31, 2011 or  
235 in approximately equal annual installments by January 31, 2014;

236 (ff) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
237 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
238 through any agency of the Department of the Interior;

239 (gg) "Settlement" shall mean the Stipulation of Settlement dated September 13,  
240 2006, the Order Approving Stipulation of Settlement, and the Judgment and further orders issued  
241 by the Court pursuant to the terms and conditions of the Settlement in Natural Resources  
242 Defense Council, et al. v. Rodgers, et al., No. CIV-S-88-1658 LLJ/GGH;

243 (hh) "Tiered Pricing Component" shall be the incremental amount to be paid  
244 for each acre-foot of Water Delivered as described in subdivision (I)(1) of Article 7 of this  
245 Contract;

246 (ii) "Water Delivered" or "Delivered Water" shall mean Project Water  
247 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting  
248 Officer;

249 (jj) "Water Made Available" shall mean the estimated amount of Project  
250 Water that can be delivered to the Contractor for the upcoming Year as declared by the  
251 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

252 (kk) "Water Management Goal" shall mean the goal of the Settlement to  
253 reduce or avoid adverse water supply impacts to all the Friant Division Project Contractors that  
254 may result from the interim flows and restoration flows provided for in the Settlement;

255 (ll) "Water Scheduled" shall mean Project Water made available to the  
256 Contractor for which times and quantities for delivery have been established by the Contractor  
257 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

258 (mm) "Year" shall mean the period from and including March 1 of each  
259 Calendar Year through the last day of February of the following Calendar Year.

260 EFFECTIVE DATE OF CONTRACT

261 2. (a) This Contract shall become effective on the date first hereinabove written  
262 and shall continue so long as the Contractor is making the annual payments required herein and  
263 paying any other amounts owing under this Contract and applicable law, unless it is terminated  
264 by the Contracting Officer by reason of a material uncured breach by the Contractor; Provided,  
265 That the Contracting Officer shall not seek to terminate this Contract by reason of an asserted  
266 material uncured breach by the Contractor unless it has first provided at least sixty (60) days  
267 written notice of the asserted breach to the Contractor and the Contractor has failed to cure such  
268 breach (or to diligently commence curative actions satisfactory to the Contracting Officer for a  
269 breach that cannot be fully cured within sixty (60) days) within the sixty (60)-day notice period;  
270 Provided further, That this Contract may be terminated at any time by mutual consent of the  
271 parties hereto.

272                   (b)     Upon complete payment of the Repayment Obligation by the Contractor,  
273     and notwithstanding any Additional Capital Obligation that may later be established, the Tiered  
274     Pricing Component as that term is utilized in this Contract, the acreage limitations, reporting, and  
275     Full Cost pricing provisions of Federal Reclamation law, and subdivisions (k), (l), (o) through  
276     (q), (s), and (v) of Article 1, subdivisions (a)(2)(A), (l)(1), (l)(2), and (l)(3) of Article 7, Article  
277     14, subdivision (a) of Article 18, and Article 25, all of this Contract, shall no longer be  
278     applicable to the Contractor. Upon complete payment of the Repayment Obligation by the  
279     Contractor, and notwithstanding any Additional Capital Obligation that may later be established,  
280     the terms of this Contract shall be as provided in the restated contract attached hereto as Exhibit  
281     "E", which has been prepared solely as a matter of administrative convenience. Exhibit "E"  
282     makes no substantive revisions other than those required by this subdivision of this Article of  
283     this Contract. Accordingly, upon complete payment of the Repayment Obligation by the  
284     Contractor, and notwithstanding any Additional Capital Obligation that may later be established,  
285     the parties shall refer to Exhibit "E" as their entire agreement under this Contract.

286                   (c)     This Contract supersedes in its entirety and is intended to replace in full  
287     the Assignment Contract; Provided, That if this Contract is terminated or determined to be  
288     invalid or unenforceable for any reason other than a material uncured breach of this Contract by  
289     the Contractor, the Assignment Contract shall not be superseded and shall be in full force and  
290     effect. Notwithstanding the foregoing, the right of Ivanhoe Irrigation District to reversion as  
291     described in Paragraph 6 of the Assignment Contract is hereby expressly preserved.

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights, permits, and licenses, Federal law, the Settlement including the SJRRSA, and subject to the provisions set forth in Articles 12 and 13 of this Contract, the Contracting Officer shall make available for delivery to the Contractor from the Project 1,200 acre-feet of Class 1 Water and 7,400 acre-feet of Class 2 Water for irrigation and M&I purposes. The quantity of Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(b) Upon complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, the Contractor shall have a permanent right to the Contract Total in accordance with the 1956 Act and the terms of this Contract. This right shall not be disturbed so long as the Contractor fulfills all of its obligations hereunder. The quantity of water made available for delivery in any given Year shall remain subject to the terms and conditions of subdivision (a) of this Article of this Contract.

(c) The Contractor shall utilize the Project Water in accordance with all applicable legal requirements.

(d) The Contractor shall make reasonable and beneficial use of all Project Water or other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted within the

313 Contractor's Service Area which are consistent with applicable State law and result in use  
314 consistent with applicable Federal Reclamation law will be allowed; Provided, That any direct  
315 recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted  
316 pursuant to Article 27 of this Contract; Provided further, That such Water Conservation Plan  
317 demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a  
318 long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such  
319 uses and in compliance with Federal Reclamation law. Groundwater recharge programs,  
320 groundwater banking programs, surface water storage programs, and other similar programs  
321 utilizing Project Water or other water furnished pursuant to this Contract conducted outside the  
322 Contractor's Service Area may be permitted upon written approval of the Contracting Officer,  
323 which approval will be based upon environmental documentation, Project Water rights, and  
324 Project operational concerns. The Contracting Officer will address such concerns in regulations,  
325 policies, or guidelines.

326 (e) The Contractor, through this Contract, shall comply with requirements  
327 applicable to the Contractor in biological opinion(s) prepared as a result of the consultation  
328 regarding the execution of the Existing Contract undertaken pursuant to Section 7 of the  
329 Endangered Species Act of 1973, as amended, as well as the requirements of any other biological  
330 opinions applicable to Project Water delivery under this Contract, that are within the  
331 Contractor's legal authority to implement. The Contractor shall comply with the limitations or  
332 requirements imposed by environmental documentation applicable to the Contractor and within  
333 its legal authority to implement regarding specific activities, including conversion of Irrigation

334 Water to M&I Water. Nothing herein shall be construed to prevent the Contractor from  
335 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any  
336 biological opinion or other environmental documentation referred to in this Article of this  
337 Contract.

338 (f) Subject to subdivisions (l) and (n) of this Article of this Contract,  
339 following the declaration of Water Made Available under Article 4 of this Contract, the  
340 Contracting Officer will make a determination whether Project Water, or other water available to  
341 the Project, can be made available to the Contractor in addition to the Contract Total in this  
342 Article of this Contract during the Year without adversely impacting the Project or other Project  
343 Contractors and consistent with the Secretary's legal obligations. At the request of the  
344 Contractor, the Contracting Officer will consult with the Contractor prior to making such a  
345 determination. Subject to subdivisions (l) and (n) of this Article of this Contract, if the  
346 Contracting Officer determines that Project Water, or other water available to the Project, can be  
347 made available to the Contractor, the Contracting Officer will announce the availability of such  
348 water and shall so notify the Contractor as soon as practical. The Contracting Officer will  
349 thereafter meet with the Contractor and other Project Contractors capable of taking such water to  
350 determine the most equitable and efficient allocation of such water. If the Contractor requests  
351 the delivery of any quantity of such water, the Contracting Officer shall make such water  
352 available to the Contractor in accordance with applicable statutes, regulations, guidelines, and  
353 policies.

354 (g) The Contractor may request permission to reschedule for use during the  
355 subsequent Year some or all of the Water Made Available to the Contractor during the current  
356 Year referred to as "carryover." The Contractor may request permission to use during the  
357 current Year a quantity of Project Water which may be made available by the United States to  
358 the Contractor during the subsequent Year referred to as "pre-use." The Contracting Officer's  
359 written approval may permit such uses in accordance with applicable statutes, regulations,  
360 guidelines, and policies.

361 (h) The Contractor's right pursuant to Federal Reclamation law and applicable  
362 State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract  
363 shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this  
364 Contract. Nothing in the preceding sentence shall affect the Contracting Officer's ability to  
365 impose shortages under Article 12 or subdivision (b) of Article 13 of this Contract.

366 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
367 delivered for purposes other than those described in subdivisions (r) and (u) of Article 1 of this  
368 Contract upon written approval by the Contracting Officer in accordance with the terms and  
369 conditions of such approval.

370 (j) The Contracting Officer shall make reasonable efforts to protect the water  
371 rights and other rights described in the fourth (4<sup>th</sup>) Explanatory Recital of this Contract and to  
372 provide the water available under this Contract. The Contracting Officer shall not object to  
373 participation by the Contractor, in the capacity and to the extent permitted by law, in  
374 administrative proceedings related to the water rights and other rights described in the fourth

375 (4<sup>th</sup>) Explanatory Recital of this Contract; Provided however, That the Contracting Officer  
376 retains the right to object to the substance of the Contractor's position in such a proceeding.  
377 Provided further, that in such proceedings the Contracting Officer shall recognize the Contractor  
378 has a legal right under the terms of this Contract to use Project Water.

379 (k) Project Water furnished to the Contractor during any month designated in  
380 a schedule or revised schedule submitted by the Contractor and approved by the Contracting  
381 Officer shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent  
382 that Class 1 Water is called for in such schedule for such month and shall be deemed to have  
383 been accepted as Class 2 Water to the extent Class 2 Water is called for in such schedule for such  
384 month. If in any month the Contractor diverts a quantity of water in addition to the total amount  
385 of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised  
386 schedule for such month, such additional diversions shall be charged first against the  
387 Contractor's remaining Class 2 Water supply available in the current Year. To the extent the  
388 Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to  
389 account for such additional diversions, such additional diversions shall be charged against the  
390 Contractor's remaining Class 1 Water supply available in the current Year. To the extent the  
391 Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year  
392 are not sufficient to account for such additional diversions, such additional diversions shall be  
393 charged first against the Contractor's available Class 2 Water supply and then against the  
394 Contractor's available Class 1 Water supply, both for the following Year. Payment for all  
395 additional diversions of water shall be made in accordance with Article 7 of this Contract.

396 (l) If the Contracting Officer determines there is a Project Water supply  
397 available at Friant Dam as the result of an unusually large water supply not otherwise storable for  
398 Project purposes or infrequent and otherwise unmanaged flood flows of short duration, such  
399 water will be made available to the Contractor and others under Section 215 of the Act of  
400 October 12, 1982, pursuant to the priorities specified below if the Contractor enters into a  
401 temporary contract with the United States not to exceed one (1) year for the delivery of such  
402 water or as otherwise provided for in Federal Reclamation law and associated regulations. Such  
403 water may be identified by the Contractor either (i) as additional water to supplement the supply  
404 of Class 1 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon  
405 written notification to the Contracting Officer, as water to be credited against the Contractor's  
406 Class 2 Water supply available pursuant to this Contract. The Contracting Officer shall make  
407 water determined to be available pursuant to this subsection according to the following priorities:  
408 first, to contractors for Class 1 Water and/or Class 2 Water within the Friant Division; second, to  
409 contractors in the Cross Valley Division of the Project. The Contracting Officer will consider  
410 requests from other parties for Section 215 Water for use within the area identified as the Friant  
411 Division service area in the environmental assessment developed in connection with the  
412 execution of the Existing Contract.

413 (m) Nothing in this Contract, nor any action or inaction of the Contractor or  
414 Contracting Officer in connection with the implementation of this Contract, is intended to  
415 override, modify, supersede or otherwise interfere with any term or condition of the water rights  
416 and other rights referred in the fourth (4<sup>th</sup>) Explanatory Recital of this Contract.

417           (n)     The rights of the Contractor under this Contract are subject to the terms of  
418 the contract for exchange waters, dated July 27, 1939, between the United States and the San  
419 Joaquin and Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred  
420 to as the Exchange Contractors), Contract No. I1r-1144, as amended. The United States agrees  
421 that it will not deliver to the Exchange Contractors thereunder waters of the San Joaquin River  
422 unless and until required by the terms of said contract, and the United States further agrees that it  
423 will not voluntarily and knowingly determine itself unable to deliver to the Exchange  
424 Contractors entitled thereto from water that is available or that may become available to it from  
425 the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta those quantities  
426 required to satisfy the obligations of the United States under said Exchange Contract and under  
427 Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract I1r-1145,  
428 dated July 27, 1939).

429           (o)     Pursuant to and consistent with section 10004 of SJRRSA and Paragraph  
430 16 of the Settlement, the Contracting Officer is required to develop and implement a plan for  
431 recirculation, recapture, reuse, exchange or transfer of water released for restoration flows or  
432 interim flows, as those terms are defined in the Settlement, to reduce or avoid impacts to water  
433 deliveries caused by said restoration flows or interim flows and water developed through such  
434 activities may be made available (i) to the Contractor without the need of an additional contract,  
435 and/or (ii) to others on behalf of the Contractor under terms mutually acceptable to the  
436 Contractor and the Contracting Officer that are consistent with the Water Management Goal.

TIME FOR DELIVERY OF WATER

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4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall announce the Contracting Officer's initial declaration of the Water Made Available. The declaration will be updated monthly and more frequently if necessary, based on then-current operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made Available will be made. The Contracting Officer shall provide forecasts of Project operations and the basis of the estimate, with relevant supporting information, upon the written request of the Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer shall provide the Contractor with the updated Long Term Historic Average. The declaration of Project operations will be expressed in terms of both Water Made Available and the Long Term Historic Average.

(b) On or before each March 1 and at such other times as necessary, the Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer, showing the monthly quantities of Project Water to be delivered by the United States to the Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting Officer shall use all reasonable means to deliver Project Water according to the approved schedule for the Year commencing on such March 1.

(c) The Contractor shall not schedule Project Water in excess of the quantity of Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's Service Area, or to sell, transfer or exchange pursuant to Article 10 of this Contract or bank pursuant to subdivision (d) of Article 3 of this Contract during any Year.

458           (d)     Subject to the conditions set forth in subdivision (a) of Article 3 of this  
459     Contract, the United States shall deliver Project Water to the Contractor in accordance with the  
460     initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any  
461     written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable  
462     time prior to the date(s) on which the requested change(s) is/are to be implemented; Provided,  
463     That the total amount of water requested in that schedule or revision does not exceed the  
464     quantities announced by the Contracting Officer pursuant to the provisions of subdivision (a) of  
465     Article 3 of this Contract, and the Contracting Officer determines that there will be sufficient  
466     capacity available in the appropriate Friant Division Facilities to deliver the water in accordance  
467     with that schedule; Provided further, That the Contractor shall not schedule the delivery of any  
468     water during any period as to which the Contractor is notified by the Contracting Officer or  
469     Operating Non-Federal Entity that Project facilities required to make deliveries to the Contractor  
470     will not be in operation because of scheduled O&M.

471           (e)     The Contractor may, during the period from and including November 1 of  
472     each Year through and including the last day of February of that Year, request delivery of any  
473     amount of the Class 1 Water estimated by the Contracting Officer to be made available to it  
474     during the following Year. The Contractor may, during the period from and including January 1  
475     of each Year (or such earlier date as may be determined by the Contracting Officer) through and  
476     including the last day of February of that Year, request delivery of any amount of Class 2 Water  
477     estimated by the Contracting Officer to be made available to it during the following Year. Such  
478     water shall hereinafter be referred to as pre-use water. Such request must be submitted in writing

479 by the Contractor for a specified quantity of pre-use and shall be subject to the approval of the  
480 Contracting Officer. Payment for pre-use water so requested shall be at the appropriate Rate(s)  
481 for the following Year in accordance with Article 7 of this Contract and shall be made in  
482 advance of delivery of any pre-use water. The Contracting Officer shall deliver such pre-use  
483 water in accordance with a schedule or any revision thereof submitted by the Contractor and  
484 approved by the Contracting Officer, to the extent such water is available and to the extent such  
485 deliveries will not interfere with the delivery of Project Water entitlements to other Friant  
486 Division contractors or the physical maintenance of the Project facilities. The quantities of  
487 pre-use Water Delivered pursuant to this subdivision shall be deducted from the quantities of  
488 water that the Contracting Officer would otherwise be obligated to make available to the  
489 Contractor during the following Year; Provided, That the quantity of pre-use water to be  
490 deducted from the quantities of either Class 1 Water or Class 2 Water to be made available to the  
491 Contractor in the following Year shall be specified by the Contractor at the time the pre-use  
492 water is requested or as revised in its first schedule for the following Year submitted in  
493 accordance with subdivision (b) of this Article of this Contract, based on the availability of the  
494 following Year water supplies as determined by the Contracting Officer.

495 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

496 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
497 Contract shall be delivered to the Contractor at a point or points of delivery either on Project  
498 facilities or another location or locations mutually agreed to in writing by the Contracting Officer  
499 and the Contractor.

500                   (b)     The Contracting Officer, the Operating Non-Federal Entity, or other  
501 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of  
502 water in the Friant-Kern Canal to deliver Project Water to the Contractor at specific turnouts  
503 established pursuant to subdivision (a) of this Article of this Contract.

504                   (c)     The Contractor shall not deliver Project Water to land outside the  
505 Contractor's Service Area unless approved in advance by the Contracting Officer. Until  
506 complete payment of the Repayment Obligation by the Contractor, and notwithstanding any  
507 Additional Capital Obligation that may later be established, the Contractor shall deliver Project  
508 Water in accordance with applicable acreage limitations, reporting, and Full Cost pricing  
509 provisions of Federal Reclamation law and any applicable land classification provisions of the  
510 associated regulations.

511                   (d)     All Water Delivered to the Contractor pursuant to this Contract shall be  
512 measured and recorded with equipment furnished, installed, operated, and maintained by the  
513 United States, the Operating Non-Federal Entity or other appropriate entity as designated by the  
514 Contracting Officer (hereafter "other appropriate entity") at the point or points of delivery  
515 established pursuant to subdivision (a) of this Article of this Contract. Upon the request of either  
516 party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the  
517 responsible Operating Non-Federal Entity, the accuracy of such measurements and shall take any  
518 necessary steps to adjust any errors appearing therein. For any period of time when accurate  
519 measurements have not been made, the Contracting Officer shall consult with the Contractor and

520 the responsible Operating Non-Federal Entity prior to making a final determination of the  
521 quantity delivered for that period of time.

522 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity  
523 shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project  
524 Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified  
525 in subdivision (a) of this Article of this Contract. The Contractor shall indemnify the United  
526 States, its officers, employees, agents, and assigns on account of damage or claim of damage of  
527 any nature whatsoever for which there is legal responsibility, including property damage,  
528 personal injury, or death arising out of or connected with the control, carriage, handling, use,  
529 disposal, or distribution of such Project Water beyond such delivery points, except for any  
530 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its  
531 officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity,  
532 with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct  
533 of the Contracting Officer or any of its officers, employees, agents, or assigns, including any  
534 responsible Operating Non-Federal Entity; (iii) negligence of the Contracting Officer or any of  
535 its officers, employees, agents, or assigns including any responsible Operating Non-Federal  
536 Entity; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated  
537 by the United States or responsible Operating Non-Federal Entity; Provided, That the Contractor  
538 is not the Operating Non-Federal Entity that owned or operated the malfunctioning facility(ies)  
539 from which the damage claim arose.

MEASUREMENT OF WATER WITHIN THE SERVICE AREA

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6. (a) The Contractor has established a measurement program satisfactory to the Contracting Officer; all surface water delivered for irrigation purposes within the Contractor's Service Area is measured at each agricultural turnout; and water delivered for municipal and industrial purposes is measured at each municipal and industrial service connection. The water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water, to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for municipal and industrial purposes by customer class as defined in the Contractor's water conservation plan provided for in Article 27 of this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law.

(b) To the extent the information has not otherwise been provided, upon execution of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the measurement devices or water measuring methods being used or to be used to implement subdivision (a) of this Article of this Contract and identifying the agricultural turnouts and the municipal and industrial service connections or alternative measurement programs approved by the Contracting Officer, at which such measurement devices or water

561 measuring methods are being used, and, if applicable, identifying the locations at which such  
562 devices and/or methods are not yet being used including a time schedule for implementation at  
563 such locations. The Contracting Officer shall advise the Contractor in writing within sixty (60)  
564 days as to the adequacy of, and necessary modifications, if any, of the measuring devices or  
565 water measuring methods identified in the Contractor's report and if the Contracting Officer does  
566 not respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the  
567 Contractor that the measuring devices or methods are inadequate, the parties shall within sixty  
568 (60) days following the Contracting Officer's response, negotiate in good faith the earliest  
569 practicable date by which the Contractor shall modify said measuring devices and/or measuring  
570 methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this  
571 Article of this Contract.

572 (c) All new surface water delivery systems installed within the Contractor's  
573 Service Area after the effective date of this Contract shall also comply with the measurement  
574 provisions described in subdivision (a) of this Article of this Contract.

575 (d) The Contractor shall inform the Contracting Officer and the State of  
576 California in writing by April 30 of each Year of the monthly volume of surface water delivered  
577 within the Contractor's Service Area during the previous Year.

578 (e) The Contractor shall inform the Contracting Officer and the Operating  
579 Non-Federal Entity on or before the twentieth (20<sup>th</sup>) calendar day of each month of the quantity  
580 of Irrigation and M&I Water taken during the preceding month.

RATES, METHOD OF PAYMENT FOR WATER,  
AND ACCELERATED REPAYMENT OF FACILITIES

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7. (a) The Contractor's cost obligations for all Delivered Water shall be determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the SJRRSA, and such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract.

(1) The Contractor shall pay the United States as provided for in this Article of this Contract for the Delivered Water at Rates and Charges determined in accordance with policies for Irrigation Water and M&I Water. The Contractor's Rates shall be established to recover its estimated reimbursable costs included in the O&M component of the Rate and amounts established to recover other charges and deficits, other than the construction costs. The Rates for O&M costs and Charges shall be adjusted, as appropriate, in accordance with the provisions of the SJRRSA.

(2) In accordance with the SJRRSA, the Contractor's allocable share of Project construction costs will be repaid pursuant to the provisions of this Contract.

(A) The amount due and payable to the United States, pursuant to the SJRRSA, shall be the Repayment Obligation. The Repayment Obligation has been computed by the Contracting Officer in a manner consistent with the SJRRSA and is set forth, both as a lump sum payment and as four (4) approximately equal annual installments, which amounts together with the manner in which such amounts were calculated are set forth in

603 Exhibits "C-1" and "C-2". The Repayment Obligation is due in lump sum by January 31, 2011  
604 or in approximate equal annual installments no later than January 31, 2014, as provided by the  
605 SJRRSA. The Contractor must provide appropriate notice to the Contracting Officer in writing  
606 not later than thirty (30) days prior to January 31, 2011 if electing to repay the amount due using  
607 the lump sum alternative. If such notice is not provided by such date, the Contractor shall be  
608 deemed to have elected the installment payment alternative, in which case, the first such payment  
609 shall be made no later than May 1, 2011, the second payment shall be made no later than the first  
610 anniversary of the first payment date, the third payment shall be made no later than the second  
611 anniversary of the first payment date, and the final payment shall be made no later than January  
612 31, 2014. If the installment payment option is elected by the Contractor, the Contractor may  
613 pre-pay the remaining portion of the Repayment Obligation by giving the Contracting Officer  
614 sixty (60) days written notice, in which case, the Contracting Officer shall re-compute the  
615 remaining amount due to reflect the pre-payment using the same methodology as was used to  
616 compute the initial annual installment payment amount, which is illustrated in Exhibit "C-2".  
617 Notwithstanding any Additional Capital Obligation that may later be established, receipt of the  
618 Contractor's payment of the Repayment Obligation by the United States shall fully and  
619 permanently satisfy the Existing Capital Obligation.

620 (B) Project construction costs or other capitalized costs  
621 attributable to capital additions to the Project incurred after the effective date of this Contract or  
622 that are not reflected in the schedules referenced in Exhibits "C-1" and "C-2" and properly  
623 assignable to the Contractor, shall be repaid as prescribed by the SJRRSA without interest except

624 as required by law. Consistent with Federal Reclamation law, interest shall continue to accrue  
625 on the M&I portion of unpaid Project construction costs or other capitalized cost assigned to the  
626 Contractor until such costs are paid. Increases or decreases in Project construction costs or other  
627 capitalized costs assigned to the Contractor caused solely by annual adjustment of Project  
628 construction costs or other capitalized costs assigned to each Central Valley Project contractor by  
629 the Secretary shall not be considered in determining the amounts to be paid pursuant to this  
630 subdivision (a)(2)(B), but will be considered under subdivision (b) of this Article. A separate  
631 repayment agreement shall be established by the Contractor and the Contracting Officer to  
632 accomplish repayment of all additional Project construction costs or other capitalized costs  
633 assigned to the Contractor within the timeframe prescribed by the SJRRSA subject to the  
634 following:

635 (1) If the collective annual Project construction costs or  
636 other capitalized costs that are incurred after the effective date of this Contract and properly  
637 assignable to the contractors are less than \$5,000,000, then the portion of such costs properly  
638 assignable to the Contractor shall be repaid in not more than five (5) years after notification of  
639 the allocation. This amount is the result of a collective annual allocation of Project construction  
640 costs to the contractors exercising contract conversions; Provided, That the reference to the  
641 amount of \$5,000,000 shall not be a precedent in any other context.

642 (2) If the collective annual Project construction costs or  
643 other capitalized costs that are incurred after the effective date of this Contract and properly  
644 assignable to the contractors are \$5,000,000 or greater, then the portion of such costs properly

645 assignable to the Contractor shall be repaid as provided by applicable Federal Reclamation law.  
646 This amount is the result of a collective annual allocation of Project construction costs to the  
647 contractors exercising contract conversions; Provided, That the reference to the amount of  
648 \$5,000,000 shall not be a precedent in any other context.

649 (b) Consistent with Section 10010(b) of the SJRRSA, following a final cost  
650 allocation by the Secretary upon completion of the construction of the Central Valley Project, the  
651 amounts paid by the Contractor shall be subject to adjustment to reflect the effect of any  
652 reallocation of Project construction costs or other capitalized costs assigned to the Contractor  
653 that may have occurred between the determination of Contractor's Existing Capital Obligation  
654 and the final cost allocation. In the event that the final cost allocation, as determined by the  
655 Secretary, indicates that the costs properly assignable to the Contractor, as determined by the  
656 Contracting Officer, are greater than the Existing Capital Obligation and other amounts of  
657 Project construction costs or other capitalized costs paid by the Contractor, then the Contractor  
658 shall be obligated to pay the remaining allocated costs. The term of such additional repayment  
659 contract shall be no less than one (1) year and no more than ten (10) years, however, mutually  
660 agreeable provisions regarding the rate of repayment of such amount may be developed by the  
661 parties. In the event that the final cost allocation, as determined by the Secretary, indicates that  
662 the costs properly assignable to the Contractor, as determined by the Contracting Officer, are less  
663 than the Existing Capital Obligation and other amounts of Project construction costs or other  
664 capitalized costs paid by the Contractor has paid, then the Contracting Officer shall credit such  
665 overpayment as an offset against any outstanding or future obligation of the Contractor,

666 consistent with the SJRRSA. This Contract shall be implemented in a manner consistent with  
667 Section 10010(f) of the SJRRSA.

668 (c) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
669 provide the Contractor an estimate of the Charges for Project Water that will be applied to the  
670 period October 1, of the current Calendar Year, through September 30, of the following Calendar  
671 Year, and the basis for such estimate. The Contractor shall be allowed not less than two (2)  
672 months to review and comment on such estimates. On or before September 15 of each Calendar  
673 Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect  
674 during the period October 1 of the current Calendar Year, through September 30 of the following  
675 Calendar Year, and such notification shall revise Exhibit "B". Charges shall be subject to  
676 reduction consistent with the SJRRSA based upon the average annual delivery amount agreed to  
677 by the Contracting Officer and the Contractor.

678 (1) Upon complete payment of the Repayment Obligation by the  
679 Contractor, and notwithstanding any Additional Capital Obligation that may later be established,  
680 for the years 2020 through 2039 inclusive, Charges shall reflect the reduction on a per acre-foot  
681 basis consistent with Section 10010(d)(1) of the SJRRSA. Exhibit "D" sets forth the reduction in  
682 Charges to offset the Financing Costs as prescribed in Section 10010(d)(1) of the SJRRSA;  
683 Provided, That if the Secretary determines such Charges are otherwise needed, an equivalent  
684 reduction will be made to O&M costs consistent with such provisions of the SJRRSA.  
685 Consistent with Section 10010(d)(1) of the SJRRSA and as shown in Exhibit "D", the Friant  
686 Surcharge reduction has been calculated based upon the anticipated average annual water

687 deliveries, for the purpose of this reduction only, mutually agreed upon by the Secretary and the  
688 Contractor for the period from January 1, 2020 through December 31, 2039. The Friant  
689 Surcharge reduction shall remain fixed and shall only be applied to Water Delivered pursuant to  
690 this Contract to which the Friant Surcharge applies (including but not limited to water  
691 transferred, banked, or exchanged), commencing on January 1, 2020 until such volume of Water  
692 Delivered equals 41,120 acre-feet or December 31, 2039, whichever occurs first.

693 (2) Further, to fully offset the Financing Costs, Contractor shall be  
694 entitled to a reduction in other outstanding or future obligations of the Contractor in accordance  
695 with Section 10010(d)(2) of the SJRRSA. The amount of such further reduction in outstanding  
696 or future obligations of the Contractor after October 1, 2019 has been computed by the  
697 Contracting Officer, and as computed, such amount is set forth in Exhibit "D".

698 (d) Prior to October 1 of each Calendar Year, the Contracting Officer shall  
699 make available to the Contractor an estimate of the Rates and Tiered Pricing Component for  
700 Project Water for the following Year and the computations and cost allocations upon which those  
701 Rates are based. The Contractor shall be allowed not less than two (2) months to review and  
702 comment on such computations and cost allocations. By December 31 of each Calendar Year,  
703 the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing  
704 Component to be in effect for the upcoming Year, and such notification shall revise Exhibit "B".  
705 The O&M component of the Rate may be reduced as provided in the SJRRSA.

706 (e) At the time the Contractor submits the initial schedule for the delivery of  
707 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the

708 Contractor shall make an advance payment to the United States equal to the total amount payable  
709 pursuant to the applicable Rate(s) set under subdivision (a) of this Article of this Contract, for the  
710 Project Water scheduled to be delivered pursuant to this Contract during the first two (2)  
711 calendar months of the Year. Before the end of the first month and before the end of each  
712 calendar month thereafter, the Contractor shall make an advance payment to the United States, at  
713 the Rate(s) set under subdivision (a) of this Article of this Contract, for the Water Scheduled to  
714 be delivered pursuant to this Contract during the second month immediately following.  
715 Adjustments between advance payments for Water Scheduled and payments at Rates due for  
716 Water Delivered shall be made before the end of the following month; Provided, That any  
717 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which  
718 increases the amount of Water Delivered pursuant to this Contract during any month shall be  
719 accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project  
720 Water is not delivered to the Contractor in advance of such payment. In any month in which the  
721 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of  
722 Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered  
723 to the Contractor unless and until an advance payment at the Rates then in effect for such  
724 additional Project Water is made. Final adjustment between the advance payments for the Water  
725 Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this  
726 Contract shall be made as soon as practicable but no later than April 30th of the following Year,  
727 or sixty (60) days after the delivery of Project Water carried over under subdivision (g) of Article  
728 3 of this Contract if such water is not delivered by the last day of February.

729 (f) The Contractor shall also make a payment in addition to the Rate(s) in  
730 subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the  
731 Charges and the appropriate Tiered Pricing Component then in effect, before the end of the  
732 month following the month of delivery; Provided, That the Contractor may be granted an  
733 exception from the Tiered Pricing Component pursuant to subdivision (1)(2) of this Article of this  
734 Contract. The payments shall be consistent with the quantities of Irrigation Water and M&I  
735 Water Delivered as shown in the water delivery report for the subject month prepared by the  
736 Contracting Officer. Such water delivery report shall be the basis for payment of Charges and  
737 Tiered Pricing Components by the Contractor, and shall be provided to the Contractor by the  
738 Contracting Officer (as applicable) within five (5) days after the end of the month of delivery.  
739 The water delivery report shall be deemed a bill basis for payment of Charges and the applicable  
740 Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment  
741 of Charges shall be made through the adjustment of payments due to the United States for  
742 Charges for the next month. Any amount to be paid for past due payment of Charges shall be  
743 computed pursuant to Article 21 of this Contract.

744 (g) The Contractor shall pay for any Water Delivered under subdivision (d),  
745 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to  
746 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting  
747 policies; Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this  
748 Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water  
749 under subdivision (a) of this Article of this Contract.

750 (h) Payments to be made by the Contractor to the United States under this  
751 Contract may be paid from any revenues available to the Contractor.

752 (i) All revenues received by the United States from the Contractor relating to  
753 the delivery of Project Water or the delivery of non-project water through Project facilities shall  
754 be allocated and applied in accordance with Federal Reclamation law and the associated rules or  
755 regulations, the then-existing Project Ratesetting policies for M&I Water or Irrigation Water, and  
756 consistent with the SJRRSA.

757 (j) The Contracting Officer shall keep its accounts, pertaining to the  
758 administration of the financial terms and conditions of its long-term contracts, in accordance  
759 with applicable Federal standards so as to reflect the application of Project costs and revenues.

760 The Contracting Officer shall, each Year upon request of the Contractor, provide to the  
761 Contractor a detailed accounting of all Project and Contractor expense allocations, the  
762 disposition of all Project and Contractor revenues, and a summary of all water delivery  
763 information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
764 to resolve any discrepancies or disputes relating to accountings, reports, or information.

765 (k) The parties acknowledge and agree that the efficient administration of this  
766 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
767 policies, and procedures used for establishing Rates, Charges, Tiered Pricing Components,  
768 and/or for making and allocating payments, other than those set forth in this Article of this  
769 Contract, may be in the mutual best interest of the parties, it is expressly agreed that the parties

770 may enter into agreements to modify the mechanisms, policies, and procedures for any of those  
771 purposes while this Contract is in effect without amending this Contract.

772 (l) (1) Beginning at such time as the total of the deliveries of Class 1  
773 Water and Class 2 Water in a Year exceed eighty (80) percent of the Contract Total, then before  
774 the end of the month following the month of delivery the Contractor shall make an additional  
775 payment to the United States equal to the applicable Tiered Pricing Component. The Tiered  
776 Pricing Component for the total of the deliveries of Class 1 Water and Class 2 Water in excess of  
777 eighty (80) percent of the Contract Total, but less than or equal to ninety (90) percent of the  
778 Contract Total, shall equal the one-half of the difference between the Rate established under  
779 subdivision (a) of this Article of this Contract and the Irrigation Full Cost Water Rate, or M&I  
780 Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the total of  
781 the deliveries of Class 1 Water and Class 2 Water which exceeds ninety (90) percent of the  
782 Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of  
783 this Article of this Contract and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water  
784 Rate, whichever is applicable.

785 (2) Subject to the Contracting Officer's written approval, the  
786 Contractor may request and receive an exemption from such Tiered Pricing Components for  
787 Project Water Delivered to produce a crop which the Contracting Officer determines will provide  
788 significant and quantifiable habitat values for waterfowl in fields where the water is used and the  
789 crops are produced; Provided, That the exemption from the Tiered Pricing Components for  
790 Irrigation Water shall apply only if such habitat values can be assured consistent with the

791 purposes of CVPIA through binding agreements executed with or approved by the Contracting  
792 Officer prior to use of such water.

793 (3) For purposes of determining the applicability of the Tiered Pricing  
794 Components pursuant to this Article of this Contract, Water Delivered shall include Project  
795 Water that the Contractor transfers to others but shall not include Project Water transferred and  
796 delivered to the Contractor.

797 (m) Rates under the respective ratesetting policies will be established to  
798 recover only reimbursable O&M (including any deficits) costs of the Project, as those terms are  
799 used in the then-existing Project ratesetting policies, and consistent with the SJRRSA, and  
800 interest, where appropriate, except in instances where a minimum Rate is applicable in  
801 accordance with the relevant Project ratesetting policy. Changes of significance in practices  
802 which implement the Contracting Officer's ratesetting policies will not be implemented until the  
803 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and  
804 impact of the proposed change.

805 (n) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
806 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates  
807 adjusted upward or downward to reflect the changed costs of delivery (if any) incurred by the  
808 Contracting Officer in the delivery of the transferred Project Water to the transferee's point of  
809 delivery in accordance with the then-existing Central Valley Project Ratesetting Policy.

810 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

811 8. The Contractor and the Contracting Officer concur that, as of the effective date of  
812 this Contract, the Contractor has no non-interest bearing operation and maintenance deficits and  
813 therefore shall have no further liability.

814 RECOVERED WATER ACCOUNT

815 9. (a) Notwithstanding any other provisions of this Contract, water delivered to  
816 the Contractor under its Recovered Water Account as provided at Paragraph 16(b) of the  
817 Settlement and affirmed by Section 10004(a)(5) of the SJRRSA shall be at the total cost of  
818 \$10.00 per acre foot. Recovered Water Account water provided to the Contractor shall be  
819 administered at a priority for delivery lower than Class 2 Water and higher than Section 215  
820 Water.

821 (b) The manner in which the Recovered Water Account will be administered  
822 will be developed in accordance with subdivision (k) of Article 7 of this Contract, the SJRRSA,  
823 and Paragraph 16 of the Settlement.

824 SALES, TRANSFERS, AND EXCHANGES OF WATER

825 10. (a) The right to receive Project Water provided for in this Contract may be  
826 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of  
827 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,  
828 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project  
829 Water under this Contract may take place without the prior written approval of the Contracting  
830 Officer, except as provided for in subdivisions (b) and (c) of this Article of this Contract. No

831 such Project Water sales, transfers, or exchanges shall be approved, where approval is required,  
832 absent compliance with appropriate environmental documentation including but not limited to  
833 the National Environmental Policy Act and the Endangered Species Act. Such environmental  
834 documentation must include, as appropriate, an analysis of groundwater impacts and economic  
835 and social effects, including environmental justice, of the proposed Project Water sales, transfers  
836 and exchanges on both the transferor/exchanger and transferee/exchange recipient.

837 (b) In order to facilitate efficient water management by means of Project  
838 Water sales, transfers, or exchanges of the type historically carried out among Project  
839 Contractors located within the same geographical area and to allow the Contractor to participate  
840 in an accelerated water transfer program, the Contracting Officer has prepared, as appropriate,  
841 necessary environmental documentation including, but not limited to, the National  
842 Environmental Policy Act and the Endangered Species Act analyzing annual Project Water sales,  
843 transfers, or exchanges among Contractors within the same geographical area and the  
844 Contracting Officer has determined that such Project Water sales, transfers, and exchanges  
845 comply with applicable law.

846 (c) Project Water sales, transfers, and exchanges analyzed in the  
847 environmental documentation referenced in subdivision (b) of this Article of this Contract, shall  
848 be conducted with advance notice to the Contracting Officer and the Contracting Officer's  
849 written acknowledgement of the transaction, but shall not require prior written approval by the  
850 Contracting Officer.

851 (d) For Project Water sales, transfers, or exchanges to qualify under  
852 subdivision (b) of this Article of this Contract such Project Water sale, transfer, or exchange  
853 must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for  
854 M&I use, groundwater recharge, groundwater banking, similar groundwater activities, surface  
855 water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to  
856 established cropland, wildlife refuges, groundwater basins or municipal and industrial use;  
857 (ii) occur within a single Year; (iii) occur between a willing seller and a willing buyer or willing  
858 exchangers; (iv) convey water through existing facilities with no new construction or  
859 modifications to facilities and be between existing Project Contractors and/or the Contractor and  
860 the United States, Department of the Interior; and (v) comply with all applicable Federal, State,  
861 and local or tribal laws and requirements imposed for protection of the environment and Indian  
862 Trust Assets, as defined under Federal law.

863 (e) The environmental documentation and the Contracting Officer's  
864 compliance determination for transactions described in subdivision (b) of this Article of this  
865 Contract shall be reviewed every five (5) years and updated, as necessary, prior to the expiration  
866 of the then-existing five (5) year period. All subsequent environmental documentation shall  
867 include an alternative to evaluate not less than the quantity of Project Water historically sold,  
868 transferred, or exchanged within the same geographical area.

869 (f) Consistent with Section 10010(e)(1) of the SJRRSA, any agreement  
870 providing for sale, transfer, or exchange of Project Water that is not used for interim flows or  
871 restoration flows pursuant to Paragraphs 13 and 15 of the Settlement, shall be deemed to satisfy

872 the requirements of CVPIA section 3405(a)(1)(A) and (I); Provided, That such sales, transfers, or  
873 exchanges comply with sub-division (f)(1) and (f)(2) below.

874 (1) Project Water sales, transfers, and exchanges conducted under the  
875 provisions of subdivision (f) of this Article of this Contract shall not require the Contracting  
876 Officer's concurrence as to compliance with CVPIA 3405(a)(1)(A) and (I); Provided, That the  
877 Contractor shall, for Project Water sales, transfers, or exchanges, with a term greater than one (1)  
878 year, provide ninety (90) days written advance notification to the Contracting Officer and  
879 similarly thirty (30) days written advance notification of any Project Water sale, transfer, or  
880 exchange with a term of less than one (1) year. The Contracting Officer shall promptly make  
881 such notice publicly available.

882 (2) The Contractor's thirty (30) days or ninety (90) days advance  
883 written notification pursuant to subdivision (f)(1) of this Article of this Contract shall explain  
884 how the proposed Project Water sales, transfers, or exchanges are intended to reduce, avoid, or  
885 mitigate impacts to Project Water deliveries caused by interim or restoration flows or is  
886 otherwise intended to facilitate the Water Management Goal as described in the SJRRSA. The  
887 Contracting Officer shall promptly make such notice publicly available.

888 (3) In addition, the Contracting Officer shall, at least annually, make  
889 available publicly a compilation of the number of Project Water sales, transfers, and exchange  
890 agreements implemented in accordance with sub-divisions (f)(1) and (f)(2) of this Article of this  
891 Contract.

892 (4) Project Water sold, transferred, or exchanged under an agreement  
893 that meets the terms of subdivisions (f)(1) and (f)(2) of this Article of this Contract shall not be  
894 counted as a replacement or an offset for purposes of determining reductions to Project Water  
895 deliveries to any Friant Division Project Contractor except as provided in Paragraph 16(b) of the  
896 Settlement.

897 (g) Upon complete payment of the Repayment Obligation by the Contractor,  
898 and notwithstanding any Additional Capital Obligation that may later be established, in the case  
899 of a sale or transfer of Irrigation Water to another contractor which is otherwise subject to the  
900 acreage limitations, reporting, and Full Cost pricing provisions of the RRA, such sold or  
901 transferred Irrigation Water shall not be subject to such RRA provisions, however, in the case of  
902 a sale or transfer of Irrigation Water to the Contractor from another contractor which is subject to  
903 RRA provisions, such RRA provisions shall apply to delivery of such water.

904 APPLICATION OF PAYMENTS AND ADJUSTMENTS

905 11. (a) The amount of any overpayment by the Contractor of the Contractor's  
906 O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current  
907 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of  
908 more than One Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu  
909 of a refund, any amount of such overpayment, at the option of the Contractor, may be credited  
910 against amounts to become due to the United States by the Contractor. With respect to  
911 overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or  
912 anyone having or claiming to have the right to the use of any of the Project Water supply

913 provided for herein. All credits and refunds of overpayments shall be made within thirty (30)  
914 days of the Contracting Officer obtaining direction as to how to credit or refund such  
915 overpayment in response to the notice to the Contractor that it has finalized the accounts for the  
916 Year in which the overpayment was made.

917 (b) All advances for miscellaneous costs incurred for work requested by the  
918 Contractor pursuant to Article 26 of this Contract shall be adjusted to reflect the actual costs  
919 when the work has been completed. If the advances exceed the actual costs incurred, the  
920 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's  
921 advances, the Contractor will be billed for the additional costs pursuant to Article 26 of this  
922 Contract.

923 TEMPORARY REDUCTIONS—RETURN FLOWS

924 12. (a) The Contracting Officer shall make all reasonable efforts to optimize  
925 delivery of the Contract Total subject to: (i) the authorized purposes and priorities of the Project;  
926 (ii) the requirements of Federal law and the Settlement; and (iii) the obligations of the United  
927 States under existing contracts, or renewals thereof, providing for water deliveries from the  
928 Project.

929 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily  
930 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for  
931 the purposes of investigation, inspection, maintenance, repair, or replacement of any of the  
932 Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor,  
933 but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the

934 Contractor due notice in advance of such temporary discontinuance or reduction, except in case  
935 of emergency, in which case no notice need be given; Provided, That the United States shall use  
936 its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of  
937 service after such reduction or discontinuance, and if requested by the Contractor, the United  
938 States will, if possible, deliver the quantity of Project Water which would have been delivered  
939 hereunder in the absence of such discontinuance or reduction.

940 (c) The United States reserves the right to all seepage and return flow water  
941 derived from Water Delivered to the Contractor hereunder which escapes or is discharged  
942 beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for  
943 the United States any right as seepage or return flow to water being used pursuant to this  
944 Contract for surface irrigation or underground storage either being put to reasonable and  
945 beneficial use pursuant to this Contract within the Contractor's Service Area by the Contractor or  
946 those claiming by, through, or under the Contractor. For purposes of this subdivision,  
947 groundwater recharge, groundwater banking and all similar groundwater activities will be  
948 deemed to be underground storage.

949 CONSTRAINTS ON THE AVAILABILITY OF WATER

950 13. (a) In its operation of the Project, the Contracting Officer will use all  
951 reasonable means to guard against a Condition of Shortage in the quantity of water to be made  
952 available to the Contractor pursuant to this Contract. In the event the Contracting Officer  
953 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the  
954 Contractor of said determination as soon as practicable.

955 (b) If there is a Condition of Shortage because of errors in physical operations  
956 of the Project, drought, other physical causes beyond the control of the Contracting Officer or  
957 actions taken by the Contracting Officer to meet legal obligations, including but not limited to  
958 obligations pursuant to the Settlement then, except as provided in subdivision (a) of Article 19 of  
959 this Contract, no liability shall accrue against the United States or any of its officers, agents, or  
960 employees for any damage, direct or indirect, arising therefrom.

961 (c) The United States shall not execute contracts which together with this  
962 Contract, shall in the aggregate provide for furnishing Class 1 Water in excess of 800,000  
963 acre-feet per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year; Provided, That,  
964 subject to subdivision (l) of Article 3 of this Contract, the limitation placed on Class 2 Water  
965 contracts shall not prohibit the United States from entering into temporary contracts of one year  
966 or less in duration for delivery of Project Water to other entities if such water is not necessary to  
967 meet the schedules as may be submitted by all Friant Division Project Contractors entitled to  
968 receive Class 1 Water and/or Class 2 Water under their contracts. Nothing in this subdivision  
969 shall limit the Contracting Officer's ability to take actions that result in the availability of new  
970 water supplies to be used for Project purposes and allocating such new supplies; Provided, That  
971 the Contracting Officer shall not take such actions until after consultation with the Friant  
972 Division Project Contractors.

973 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to  
974 this or any other contract heretofore or hereafter entered into any Year unless and until the  
975 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in

976 subdivision (c) of this Article of this Contract will be available for delivery in said Year. If the  
977 Contracting Officer determines there is or will be a shortage in any Year in the quantity of  
978 Class 1 Water available for delivery, the Contracting Officer shall apportion the available Class 1  
979 Water among all Contractors entitled to receive such water that will be made available at Friant  
980 Dam in accordance with the following:

981 (1) A determination shall be made of the total quantity of Class 1  
982 Water at Friant Dam which is available for meeting Class 1 Water contractual commitments, the  
983 amount so determined being herein referred to as the available supply.

984 (2) The total available Class 1 supply shall be divided by the Class 1  
985 Water contractual commitments, the quotient thus obtained being herein referred to as the  
986 Class 1 apportionment coefficient.

987 (3) The total quantity of Class 1 Water under Article 3 of this Contract  
988 shall be multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of  
989 Class 1 Water required to be delivered by the Contracting Officer to the Contractor for the  
990 respective Year, but in no event shall such amount exceed the total quantity of Class 1 Water  
991 specified in subdivision (a) of Article 3 of this Contract.

992 (e) If the Contracting Officer determines there is less than the quantity of  
993 Class 2 Water which the Contractor otherwise would be entitled to receive pursuant to Article 3  
994 of this Contract, the quantity of Class 2 Water which shall be furnished to the Contractor by the  
995 Contracting Officer will be determined in the manner set forth in paragraphs (1), (2), and (3), of

996 subdivision (d) of this Article of this Contract substituting the term “Class 2” for the term “Class  
997 1.”

998 (f) In the event that in any Year there is made available to the Contractor, by  
999 reason of any shortage or apportionment as provided in subdivisions (a), (d), or (e) of this Article  
1000 of this Contract, or any discontinuance or reduction of service as set forth in subdivision (b) of  
1001 Article 12 of this Contract, less than the quantity of water which the Contractor otherwise would  
1002 be entitled to receive hereunder, there shall be made an adjustment on account of the amounts  
1003 already paid to the Contracting Officer by the Contractor for Class 1 Water and Class 2 Water  
1004 for said Year in accordance with Article 11 of this Contract.

1005 UNAVOIDABLE GROUNDWATER PERCOLATION

1006 14. To the extent applicable, the Contractor shall not be deemed to have delivered  
1007 Irrigation Water to Excess Lands and Ineligible Lands within the meaning of this Contract if  
1008 such lands are irrigated with groundwater that reaches the underground strata as an unavoidable  
1009 result of the delivery of Irrigation Water by the Contractor to Eligible Lands.

1010 ACREAGE LIMITATION

1011 15. (a) Notwithstanding the application of the acreage limitation provisions to  
1012 activities referred to in subdivision (b) of this Article, subdivision (a) of Article 16, and Article  
1013 18 of this Contract, upon complete payment of the Repayment Obligation by the Contractor, and  
1014 notwithstanding any Additional Capital Obligation that may later be established, the provisions  
1015 of section 213(a) and (b) of the RRA shall apply to lands in the Contractor’s Service Area, with  
1016 the effect that acreage limitations, reporting, and Full Cost pricing provisions of the RRA shall

1017 no longer apply to lands in the Contractor's Service Area with respect to Water Delivered  
1018 pursuant to this Contract. Upon receiving the complete payment of the Repayment Obligation  
1019 from the Contractor, Reclamation will conduct a final water district review for the purpose of  
1020 determining compliance with the acreage limitations, reporting, and Full Cost pricing provisions  
1021 of the RRA from the date of the last water district review until the date when payment to  
1022 Reclamation of the Repayment Obligation is completed.

1023 (b) Project Water to which the Contractor is entitled through a separate  
1024 contract, other than this Contract, that is subject to Federal Reclamation law, may be delivered to  
1025 lands within the Contractor's Service Area. Upon complete payment of the Repayment  
1026 Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may  
1027 later be established, Project Water Delivered under this Contract may be mixed with Project  
1028 Water Delivered pursuant to a contract with the United States, other than this Contract, to which  
1029 acreage limitation and the Full cost pricing provisions of Federal Reclamation law apply without  
1030 causing the application of the acreage limitation and the full cost pricing provisions of Federal  
1031 Reclamation law to the Water Delivered pursuant to this Contract; Provided, The terms and  
1032 conditions in such other contract shall continue to apply, and if such terms and conditions so  
1033 require, the lands to receive Project Water under such other contract shall be properly designated  
1034 by the Contractor and such Project Water is to be delivered in accordance with the RRA  
1035 including any applicable acreage limitations, reporting, and Full Cost pricing provisions.

1036 COMPLIANCE WITH FEDERAL RECLAMATION LAWS

1037 16. (a) The parties agree that the delivery of irrigation water or use of Federal  
1038 facilities pursuant to this Contract is subject to Federal Reclamation law, including but not

1039 limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390 aa *et seq.*), as amended and  
1040 supplemented, and the rules and regulations promulgated by the Secretary of the Interior under  
1041 Federal Reclamation law.

1042 (b) The terms of this Contract are subject to the Settlement and the SJRRSA.

1043 Nothing in this Contract shall be interpreted to limit or interfere with the full implementation of  
1044 the Settlement and the SJRRSA.

1045 PROTECTION OF WATER AND AIR QUALITY

1046 17. (a) Project facilities used to make available and deliver water to the  
1047 Contractor shall be operated and maintained in the most practical manner to maintain the quality  
1048 of the water at the highest level possible as determined by the Contracting Officer: *Provided,*  
1049 *That* the United States does not warrant the quality of the water delivered to the Contractor and is  
1050 under no obligation to furnish or construct water treatment facilities to maintain or improve the  
1051 quality of water delivered to the Contractor.

1052 (b) The Contractor shall comply with all applicable water and air pollution  
1053 laws and regulations of the United States and the State of California; and shall obtain all required  
1054 permits or licenses from the appropriate Federal, State, or local authorities necessary for the  
1055 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,  
1056 State, and local water quality standards applicable to surface and subsurface drainage and/or  
1057 discharges generated through the use of Federal or Contractor facilities or project water provided  
1058 by the Contractor within the Contractor's Project Water Service Area.

1059 (c) This article shall not affect or alter any legal obligations of the Secretary  
1060 to provide drainage or other discharge services.

1061 WATER ACQUIRED BY THE CONTRACTOR  
1062 OTHER THAN FROM THE UNITED STATES

1063 18. (a) Until complete payment of the Repayment Obligation by the Contractor,  
1064 and notwithstanding any Additional Capital Obligation that may later be established, water or  
1065 water rights now owned or hereafter acquired by the Contractor other than from the United  
1066 States and Irrigation Water furnished pursuant to the terms of this Contract may be  
1067 simultaneously transported through the same distribution facilities of the Contractor subject to

1068 the following: (i) if the facilities utilized for commingling Irrigation Water and non-project  
1069 water were constructed without funds made available pursuant to Federal Reclamation law, the  
1070 acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation law will  
1071 be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility  
1072 of land to receive Irrigation Water must be established through the certification requirements as  
1073 specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); and (iii) the water  
1074 requirements of Eligible Lands within the Contractor's Service Area can be established and the  
1075 quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to  
1076 irrigate such Eligible Lands. The Contractor and the Contracting Officer concur that the  
1077 Contractor's distribution system was constructed without funds made available pursuant to  
1078 Federal Reclamation law. The use of this distribution system is not subject to the provisions of  
1079 this subdivision of this Article.

1080 (b) Upon complete payment of the Repayment Obligation by the Contractor,  
1081 and notwithstanding any Additional Capital Obligation that may later be established, water or  
1082 water rights now owned or hereafter acquired by the Contractor other than from the United  
1083 States pursuant to this Contract and Irrigation Water furnished pursuant to the terms of this  
1084 Contract may be simultaneously transported through the same distribution facilities of the  
1085 Contractor without the payment of fees to the United States and without application of Federal  
1086 Reclamation law to Water Delivered pursuant to this Contract or to lands which receive Water  
1087 Delivered to Contractor pursuant to this Contract.

1088 (c) Water or water rights now owned or hereafter acquired by the Contractor,  
1089 other than from the United States or adverse to the Project or its contractors (i.e., non-project  
1090 water), may be stored, conveyed and/or diverted through Project facilities, other than Friant  
1091 Division Facilities, subject to the completion of appropriate environmental documentation, with  
1092 the approval of the Contracting Officer and the execution of any contract determined by the  
1093 Contracting Officer to be necessary, consistent with the following provisions:

1094 (1) The Contractor may introduce non-project water into Project  
1095 facilities and deliver said water to lands within the Contractor's Service Area, including  
1096 Ineligible Lands, subject to payment to the United States and/or to any applicable Operating  
1097 Non-Federal Entity of an appropriate rate as determined by the Contracting Officer. In addition,  
1098 if electrical power is required to pump non-project water, the Contractor shall be responsible for  
1099 obtaining the necessary power and paying the necessary charges therefor.

1100 (2) Delivery of such non-project water in and through Project facilities  
1101 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project  
1102 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water  
1103 available to other Project Contractors; (iii) interfere with the delivery of contractual water  
1104 entitlements to any other Project Contractors; (iv) interfere with the physical maintenance of the  
1105 Project facilities; or (v) result in the United States incurring any liability or unreimbursed costs  
1106 or expenses thereby.

1107 (3) Neither the United States nor the Operating Non-Federal Entity  
1108 shall be responsible for control, care or distribution of the non-project water before it is

1109 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases  
1110 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and  
1111 their respective officers, agents, and employees, from any claim for damage to persons or  
1112 property, direct or indirect, resulting from Contractor's diversion or extraction of non-project  
1113 water from any source.

1114 (4) Diversion of such non-project water into Project facilities shall be  
1115 consistent with all applicable laws, and if involving groundwater, consistent with any  
1116 groundwater management plan for the area from which it was extracted.

1117 (5) After Project purposes are met, as determined by the Contracting  
1118 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity  
1119 of the facilities declared to be available by the Contracting Officer for conveyance and  
1120 transportation of non-project water prior to any such remaining capacity being made available to  
1121 non-project contractors.

1122 (d) Non-project water may be stored, conveyed and/or diverted through Friant  
1123 Division Facilities, subject to the prior completion of appropriate environmental documentation  
1124 and approval of the Contracting Officer without execution of a separate contract, consistent with  
1125 subdivisions (c)(1) through (c)(5) of this Article and any other condition determined to be  
1126 appropriate by the Contracting Officer.

1127 OPINIONS AND DETERMINATIONS

1128 19. (a) Where the terms of this Contract provide for actions to be based upon the  
1129 opinion or determination of either party to this Contract, said terms shall not be construed as

1130 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
1131 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly  
1132 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,  
1133 or unreasonable opinion or determination. Each opinion or determination by either party shall be  
1134 provided in a timely manner. Nothing in this Article of this Contract is intended to or shall affect  
1135 or alter the standard of judicial review applicable under Federal law to any opinion or  
1136 determination implementing a specific provision of Federal law embodied in statute or  
1137 regulation.

1138 (b) The Contracting Officer shall have the right to make determinations  
1139 necessary to administer this Contract that are consistent with the provisions of this Contract, the  
1140 laws of the United States and the State of California, and the rules and regulations promulgated  
1141 by the Secretary. Such determinations shall be made in consultation with the Contractor to the  
1142 extent reasonably practicable.

1143 COORDINATION AND COOPERATION

1144 20. (a) In order to further their mutual goals and objectives, the Contracting  
1145 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and  
1146 with other affected Project Contractors, in order to improve the operation and management of the  
1147 Project. The communication, coordination, and cooperation regarding operations and  
1148 management shall include, but not limited to, any action which will or may materially affect the  
1149 quantity or quality of Project Water supply, the allocation of Project Water supply, and Project  
1150 financial matters including, but not limited to, budget issues. The communication, coordination,

1151 and cooperation provided for hereunder shall extend to all provisions of this Contract. Each  
1152 party shall retain exclusive decision making authority for all actions, opinions, and  
1153 determinations to be made by the respective party.

1154 (b) It is the intent of the Secretary to improve water supply reliability. To  
1155 carry out this intent:

1156 (1) The Contracting Officer will, at the request of the Contractor,  
1157 assist in the development of integrated resource management plans for the Contractor. Further,  
1158 the Contracting Officer will, as appropriate, seek authorizations for implementation of  
1159 partnerships to improve water supply, water quality, and reliability.

1160 (2) The Secretary will, as appropriate, pursue program and project  
1161 implementation and authorization in coordination with Project Contractors to improve the water  
1162 supply, water quality, and reliability of the Project for all Project purposes.

1163 (3) The Secretary will coordinate with Project Contractors and the  
1164 State of California to seek improved water resource management.

1165 (4) The Secretary will coordinate actions of agencies within the  
1166 Department of the Interior that may impact the availability of water for Project purposes.

1167 (5) The Contracting Officer shall periodically, but not less than  
1168 annually, hold division level meetings to discuss Project operations, division level water  
1169 management activities, and other issues as appropriate.

1170 (c) Without limiting the contractual obligations of the Contracting Officer  
1171 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting

1172 Officer's ability to communicate, coordinate, and cooperate with the Contractor or other  
1173 interested stakeholders or to make decisions in a timely fashion as needed to protect health,  
1174 safety, physical integrity of structures or facilities, or the Contracting Officer's ability to comply  
1175 with applicable laws.

1176 CHARGES FOR DELINQUENT PAYMENTS

1177 21. (a) The Contractor shall be subject to interest, administrative and penalty  
1178 charges on delinquent installments or payments. When a payment is not received by the due  
1179 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond  
1180 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an  
1181 administrative charge to cover additional costs of billing and processing the delinquent payment.  
1182 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional  
1183 penalty charge of six (6) percent per year for each day the payment is delinquent beyond the due  
1184 date. Further, the Contractor shall pay any fees incurred for debt collection services associated  
1185 with a delinquent payment.

1186 (b) The interest charge rate shall be the greater of the rate prescribed quarterly  
1187 in the Federal Register by the Department of the Treasury for application to overdue payments,  
1188 or the interest rate of one-half of one (0.5) percent per month prescribed by Section 6 of the  
1189 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be  
1190 determined as of the due date and remain fixed for the duration of the delinquent period.

1191 (c) When a partial payment on a delinquent account is received, the amount  
1192 received shall be applied, first to the penalty, second to the administrative charges, third to the  
1193 accrued interest, and finally to the overdue payment.

1194 EQUAL EMPLOYMENT OPPORTUNITY

1195 22. During the performance of this Contract, the Contractor agrees as follows:

1196 (a) The Contractor will not discriminate against any employee or applicant for  
1197 employment because of race, color, religion, sex, disability, or national origin. The Contractor  
1198 will take affirmative action to ensure that applicants are employed, and that employees are  
1199 treated during employment, without regard to their race, color, religion, sex, disability, or  
1200 national origin. Such action shall include, but not be limited to the following: employment,  
1201 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination;  
1202 rates of pay or other forms of compensation; and selection for training, including apprenticeship.  
1203 The Contractor agrees to post in conspicuous places, available to employees and applicants for

1204 employment, notices to be provided by the Contracting Officer setting forth the provisions of this  
1205 nondiscrimination clause.

1206 (b) The Contractor will, in all solicitations or advertisements for employees  
1207 placed by or on behalf of the Contractor, state that all qualified applicants will receive  
1208 consideration for employment without regard to race, color, religion, sex, disability, or national  
1209 origin.

1210 (c) The Contractor will send to each labor union or representative of workers  
1211 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
1212 to be provided by the Contracting Officer, advising the labor union or workers' representative of  
1213 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24,  
1214 1965, and shall post copies of the notice in conspicuous places available to employees and  
1215 applicants for employment.

1216 (d) The Contractor will comply with all provisions of Executive Order No.  
1217 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary  
1218 of Labor.

1219 (e) The Contractor will furnish all information and reports required by  
1220 Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the  
1221 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and  
1222 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to  
1223 ascertain compliance with such rules, regulations, and orders.

1224 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
1225 clauses of this contract or with any of such rules, regulations, or orders, this contract may be  
1226 canceled, terminated or suspended in whole or in part and the Contractor may be declared  
1227 ineligible for further Government contracts in accordance with procedures authorized in  
1228 Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and  
1229 remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule,  
1230 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1231 (g) The Contractor will include the provisions of paragraphs (1) through (7) in  
1232 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
1233 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24,  
1234 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor  
1235 will take such action with respect to any subcontract or purchase order as may be directed by the  
1236 Secretary of Labor as a means of enforcing such provisions, including sanctions for  
1237 noncompliance: *Provided, however,* that in the event the Contractor becomes involved in, or is  
1238 threatened with, litigation with a subcontractor or vendor as a result of such direction, the

1239 Contractor may request the United States to enter into such litigation to protect the interests of  
1240 the United States.

1241 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

1242 23. (a) The obligation of the Contractor to pay the United States as provided in  
1243 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
1244 obligation may be distributed among the Contractor's water users and notwithstanding the  
1245 default of individual water users in their obligations to the Contractor.

1246 (b) The payment of charges becoming due hereunder is a condition precedent  
1247 to receiving benefits under this Contract. The United States shall not make water available to the  
1248 Contractor through Project facilities during any period in which the Contractor may be in arrears  
1249 in the advance payment of water rates due the United States. The Contractor shall not furnish  
1250 water made available pursuant to this Contract for lands or parties which are in arrears in the  
1251 advance payment of water rates levied or established by the Contractor.

1252 (c) With respect to subdivision (b) of this Article of this Contract, the  
1253 Contractor shall have no obligation to require advance payment for water rates which it levies.

1254 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1255 24. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
1256 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
1257 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights  
1258 laws, as well as with their respective implementing regulations and guidelines imposed by the  
1259 U.S. Department of the Interior and/or Bureau of Reclamation.

1260 (b) These statutes require that no person in the United States shall, on the  
1261 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be  
1262 denied the benefits of, or be otherwise subjected to discrimination under any program or activity  
1263 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the  
1264 Contractor agrees to immediately take any measures necessary to implement this obligation,  
1265 including permitting officials of the United States to inspect premises, programs, and documents.

1266 (c) The Contractor makes this agreement in consideration of and for the  
1267 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
1268 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of  
1269 Reclamation, including installment payments after such date on account of arrangements for  
1270 Federal financial assistance which were approved before such date. The Contractor recognizes  
1271 and agrees that such Federal assistance will be extended in reliance on the representations and

1272 agreements made in this Article, and that the United States reserves the right to seek judicial  
1273 enforcement thereof.

1274 PRIVACY ACT COMPLIANCE

1275 25. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)  
1276 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et  
1277 seq.) in maintaining Landholder acreage certification and reporting records, required to be  
1278 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation  
1279 Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1280 (b) With respect to the application and administration of the criminal penalty  
1281 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees  
1282 responsible for maintaining the certification and reporting records referenced in (a) above are  
1283 considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1284 (c) The Contracting Officer or a designated representative shall provide the  
1285 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau  
1286 of Reclamation Federal Register Privacy Act System of Records Notice (Acreage  
1287 Limitation—Interior, Reclamation-31) which govern the maintenance, safeguarding, and  
1288 disclosure of information contained in the Landholder's certification and reporting records.

1289 (d) The Contracting Officer shall designate a full-time employee of the  
1290 Bureau of Reclamation to be the System Manager who shall be responsible for making decisions  
1291 on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The  
1292 Contractor is authorized to grant requests by individuals for access to their own records.

1293 (e) The Contractor shall forward promptly to the System Manager each  
1294 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed  
1295 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System  
1296 Manager with information and records necessary to prepare an appropriate response to the  
1297 requester. These requirements do not apply to individuals seeking access to their own  
1298 certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the  
1299 requester elects to cite the Privacy Act as a basis for the request.

1300 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1301 26. In addition to all other payments to be made by the Contractor pursuant to this  
1302 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a  
1303 bill and detailed statement submitted by the Contracting Officer to the Contractor for such

1304 specific items of direct cost incurred by the United States for work requested by the Contractor  
1305 associated with this Contract plus indirect costs in accordance with applicable Bureau of  
1306 Reclamation policies and procedures. All such amounts referred to in this Article of this  
1307 Contract shall not exceed the amount agreed to in writing in advance by the Contractor. This  
1308 Article of this Contract shall not apply to costs for routine contract administration.

1309 WATER CONSERVATION

1310 27. (a) Prior to the delivery of water provided from or conveyed through  
1311 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor  
1312 shall be implementing an effective water conservation and efficiency program based on the  
1313 Contractor's water conservation plan that has been determined by the Contracting Officer to  
1314 meet the conservation and efficiency criteria for evaluating water conservation plans established  
1315 under Federal law. The water conservation and efficiency program shall contain definite water  
1316 conservation objectives, appropriate economically feasible water conservation measures, and  
1317 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this  
1318 Contract shall be contingent upon the Contractor's continued implementation of such water  
1319 conservation program. In the event the Contractor's water conservation plan or any revised  
1320 water conservation plan completed pursuant to subdivision (d) of this Article of this Contract  
1321 have not yet been determined by the Contracting Officer to meet such criteria, due to  
1322 circumstances which the Contracting Officer determines are beyond the control of the  
1323 Contractor, water deliveries shall be made under this Contract so long as the Contractor  
1324 diligently works with the Contracting Officer to obtain such determination at the earliest

1325 practicable date, and thereafter the Contractor immediately begins implementing its water  
1326 conservation and efficiency program in accordance with the time schedules therein.

1327 (b) Should the amount of M&I Water Delivered pursuant to subdivision (a) of  
1328 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the  
1329 Contractor shall implement the Best Management Practices identified by the time frames issued  
1330 by the California Urban Water Conservation Council for such M&I Water unless any such  
1331 practice is determined by the Contracting Officer to be inappropriate for the Contractor.

1332 (c) The Contractor shall submit to the Contracting Officer a report on the  
1333 status of its implementation of the water conservation plan on the reporting dates specified in the  
1334 then-existing conservation and efficiency criteria established under Federal law.

1335 (d) At five (5) -year intervals, the Contractor shall revise its water  
1336 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating  
1337 water conservation plans established under Federal law and submit such revised water  
1338 management plan to the Contracting Officer for review and evaluation. The Contracting Officer  
1339 will then determine if the water conservation plan meets Reclamation's then-existing  
1340 conservation and efficiency criteria for evaluating water conservation plans established under  
1341 Federal law.

1342 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1343 shall be described in the Contractor's water conservation plan.

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1344  
1345           28.     Except as specifically provided in Article 18 of this Contract, the provisions of  
1346 this Contract shall not be applicable to or affect non-project Water or water rights now owned or  
1347 hereafter acquired by the Contractor or any user of such water within the Contractor's Service  
1348 Area. Any such water shall not be considered Project Water under this Contract. In addition,  
1349 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or  
1350 any water user within the Contractor's Service Area acquires or has available under any other  
1351 contract pursuant to Federal Reclamation law.

OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1352  
1353           29.     (a)     The O&M of a portion of the Project facilities which serve the Contractor,  
1354 and responsibility for funding a portion of the costs of such O&M, have been transferred to the  
1355 Operating Non-Federal Entity by separate agreement between the United States and the  
1356 Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the  
1357 rights or obligations of the Contractor or the United States hereunder.

1358           (b)     The Contracting Officer has previously notified the Contractor in writing  
1359 that the O&M of a portion of the Project facilities which serve the Contractor has been  
1360 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly  
1361 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer  
1362 under the terms and conditions of the separate agreement between the United States and the  
1363 Operating Non-Federal Entity described in subdivision (a) of this Article of this Contract, all  
1364 rates, charges or assessments of any kind, including any assessment for reserve funds, which the

1365 Operating Non-Federal Entity or such successor determines, sets or establishes for (i) the O&M  
1366 of the portion of the Project facilities operated and maintained by the Operating Non-Federal  
1367 Entity or such successor, or (ii) the Friant Division's share of the operation, maintenance and  
1368 replacement costs for physical works and appurtenances associated with the Tracy Pumping  
1369 Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of the  
1370 O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance  
1371 and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity  
1372 or such successor shall not relieve the Contractor of its obligation to pay directly to the United  
1373 States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Components  
1374 except to the extent the Operating Non-Federal Entity collects payments on behalf of the United  
1375 States in accordance with the separate agreement identified in subdivision (a) of this Article of  
1376 this Contract.

1377 (c) For so long as the O&M of any portion of the Project facilities serving the  
1378 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the  
1379 Contracting Officer shall adjust those components of the Rates for Water Delivered under this  
1380 Contract representing the cost associated with the activity being performed by the Operating  
1381 Non-Federal Entity or its successor.

1382 (d) In the event the O&M of the Project facilities operated and maintained by  
1383 the Operating Non-Federal Entity is re-assumed by the United States during the term of this  
1384 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the  
1385 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the

1386 Contractor for Project Water under this Contract representing the O&M costs of the portion of  
1387 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the  
1388 absence of written notification from the Contracting Officer to the contrary, pay the Rates,  
1389 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the  
1390 United States in compliance with Article 7 of this Contract.

1391 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1392 30. The expenditure or advance of any money or the performance of any obligation of  
1393 the United States under this Contract shall be contingent upon appropriation or allotment of  
1394 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
1395 obligations under this Contract. No liability shall accrue to the United States in case funds are  
1396 not appropriated or allotted.

1397 BOOKS, RECORDS, AND REPORTS

1398 31. (a) The Contractor shall establish and maintain accounts and other books and  
1399 records pertaining to administration of the terms and conditions of this Contract, including: the  
1400 Contractor's financial transactions, water supply data, and Project land and right-of-way  
1401 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
1402 data; and other matters that the Contracting Officer may require. Reports thereon shall be  
1403 furnished to the Contracting Officer in such form and on such date or dates as the Contracting  
1404 Officer may require. Subject to applicable Federal laws and regulations, each party to this  
1405 Contract shall have the right during office hours to examine and make copies of the other party's  
1406 books and records relating to matters covered by this Contract.

1407 (b) Notwithstanding the provisions of subdivision (a) of this Article of this  
1408 Contract, no books, records, or other information shall be requested from the Contractor by the  
1409 Contracting Officer unless such books, records, or information are reasonably related to the  
1410 administration or performance of this Contract. Any such request shall allow the Contractor a  
1411 reasonable period of time within which to provide the requested books, records, or information.

1412 (c) At such time as the Contractor provides information to the Contracting  
1413 Officer pursuant to subdivision (a) of this Article of this Contract, a copy of such information  
1414 shall be provided to the Operating Non-Federal Entity.

1415 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

1416 32. (a) The provisions of this Contract shall apply to and bind the successors and  
1417 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1418 therein shall be valid until approved in writing by the Contracting Officer.

1419 (b) The assignment of any right or interest in this Contract by either party  
1420 shall not interfere with the rights or obligations of the other party to this Contract absent the  
1421 written concurrence of said other party.

1422 (c) The Contracting Officer shall not unreasonably condition or withhold  
1423 approval of any proposed assignment.

1424 SEVERABILITY

1425 33. In the event that a person or entity who is neither (i) a party to a Project contract,  
1426 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor  
1427 (iii) an association or other form of organization whose primary function is to represent parties to  
1428 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1429 enforceability of a provision included in this Contract and said person, entity, association, or  
1430 organization obtains a final court decision holding that such provision is legally invalid or  
1431 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),  
1432 the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of  
1433 such final court decision identify by mutual agreement the provisions in this Contract which

1434 must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate  
1435 revision(s). The time periods specified above may be extended by mutual agreement of the  
1436 parties. Pending the completion of the actions designated above, to the extent it can do so  
1437 without violating any applicable provisions of law, the United States shall continue to make the  
1438 quantities of Project Water specified in this Contract available to the Contractor pursuant to the  
1439 provisions of this Contract which were not found to be legally invalid or unenforceable in the  
1440 final court decision.

1441 RESOLUTION OF DISPUTES

1442 34. Should any dispute arise concerning any provisions of this Contract, or the  
1443 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to  
1444 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1445 Officer referring any matter to Department of Justice, the party shall provide to the other party  
1446 thirty (30) days written notice of the intent to take such action; Provided, That such notice shall  
1447 not be required where a delay in commencing an action would prejudice the interests of the party  
1448 that intends to file suit. During the thirty (30) day notice period, the Contractor and the  
1449 Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as  
1450 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the  
1451 Contractor or the United States may have.

1452 OFFICIALS NOT TO BENEFIT

1453 35. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1454 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1455 manner as other water users or landowners.

CHANGES IN CONTRACTOR'S SERVICE AREA

1456  
1457           36.   (a)   While this Contract is in effect, no change may be made in the  
1458 Contractor's Service Area or boundaries, by inclusion or exclusion of lands, dissolution,  
1459 consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

1460                   (b)   Within thirty (30) days of receipt of a request for such a change, the  
1461 Contracting Officer will notify the Contractor of any additional information required by the  
1462 Contracting Officer for processing said request, and both parties will meet to establish a mutually  
1463 agreeable schedule for timely completion of the process. Such process will analyze whether the  
1464 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this  
1465 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this  
1466 Contract or to pay for any Federally-constructed facilities for which the Contractor is  
1467 responsible; and (iii) have an impact on any Project Water rights applications, permits, or  
1468 licenses. In addition, the Contracting Officer shall comply with the National Environmental  
1469 Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs  
1470 incurred by the Contracting Officer in this process, and such costs will be paid in accordance  
1471 with Article 26 of this Contract.

FEDERAL LAWS

1472  
1473           37.   By entering into this Contract, the Contractor does not waive its rights to contest  
1474 the validity or application in connection with the performance of the terms and conditions of this  
1475 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with  
1476 the terms and conditions of this Contract unless and until relief from application of such Federal

1477 law or regulation to the implementing provision of the Contract is granted by a court of  
1478 competent jurisdiction.

1479 EMERGENCY RESERVE FUND

1480 38. The Contractor and Contracting Officer acknowledge that the requirements to  
1481 establish and maintain a minimum reserve fund account to finance extraordinary O&M costs of  
1482 Friant Division Facilities is and will continue to be administered under Contract No.  
1483 8-07-20-X0356 titled Agreement To Transfer The Operation, Maintenance And Replacement  
1484 And Certain Financial And Administrative Activities Related To The Friant-Kern Canal And  
1485 Associated Works, dated March 1, 1998 as amended, supplemented, assigned, or renewed.

1486 MEDIUM FOR TRANSMITTING PAYMENT

1487 39. (a) All payments from the Contractor to the United States under this contract  
1488 shall be by the medium requested by the United States on or before the date payment is due. The  
1489 required method of payment may include checks, wire transfers, or other types of payment  
1490 specified by the United States.

1491 (b) Upon execution of the contract, the Contractor shall furnish the  
1492 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose  
1493 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising  
1494 out of the Contractor's relationship with the United States.

1495 NOTICES

1496 40. Any notice, demand, or request authorized or required by this Contract shall be  
1497 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
1498 delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno,  
1499 California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered  
1500 to the Board of Directors of Kaweah Delta Water Conservation District, 2975 North Farmersville  
1501 Boulevard, Farmersville, California 93223. The designation of the addressee or the address may  
1502 be changed by notice given in the same manner as provided in this Article of this Contract for  
1503 other notices.

1504

CONFIRMATION OF CONTRACT

1505  
1506  
1507  
1508  
1509  
1510

41. The Contractor, after the execution of this Contract, shall promptly provide to the Contracting Officer a decree of a court of competent jurisdiction of the State of California, confirming the execution of this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1511

CONTRACT DRAFTING CONSIDERATIONS

1512  
1513  
1514  
1515  
1516  
1517

42. Articles 1 through 15, subdivision (c) of Article 16, Articles 18 through 20, subdivision (c) of Article 23, Articles 26 through 29, subdivisions (b) and (c) of Article 31, subdivisions (b) and (c) of Article 32, Articles 33 through 34, subdivision (b) of Article 36, and Articles 37 through 38 of this Contract have been drafted, negotiated, and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party shall be considered to have drafted the stated Articles.

1518 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day  
1519 and year first above written.

THE UNITED STATES OF AMERICA

APPROVED AS TO LEGAL  
FORM AND SUFFICIENCY  
*James E. Turner*  
OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

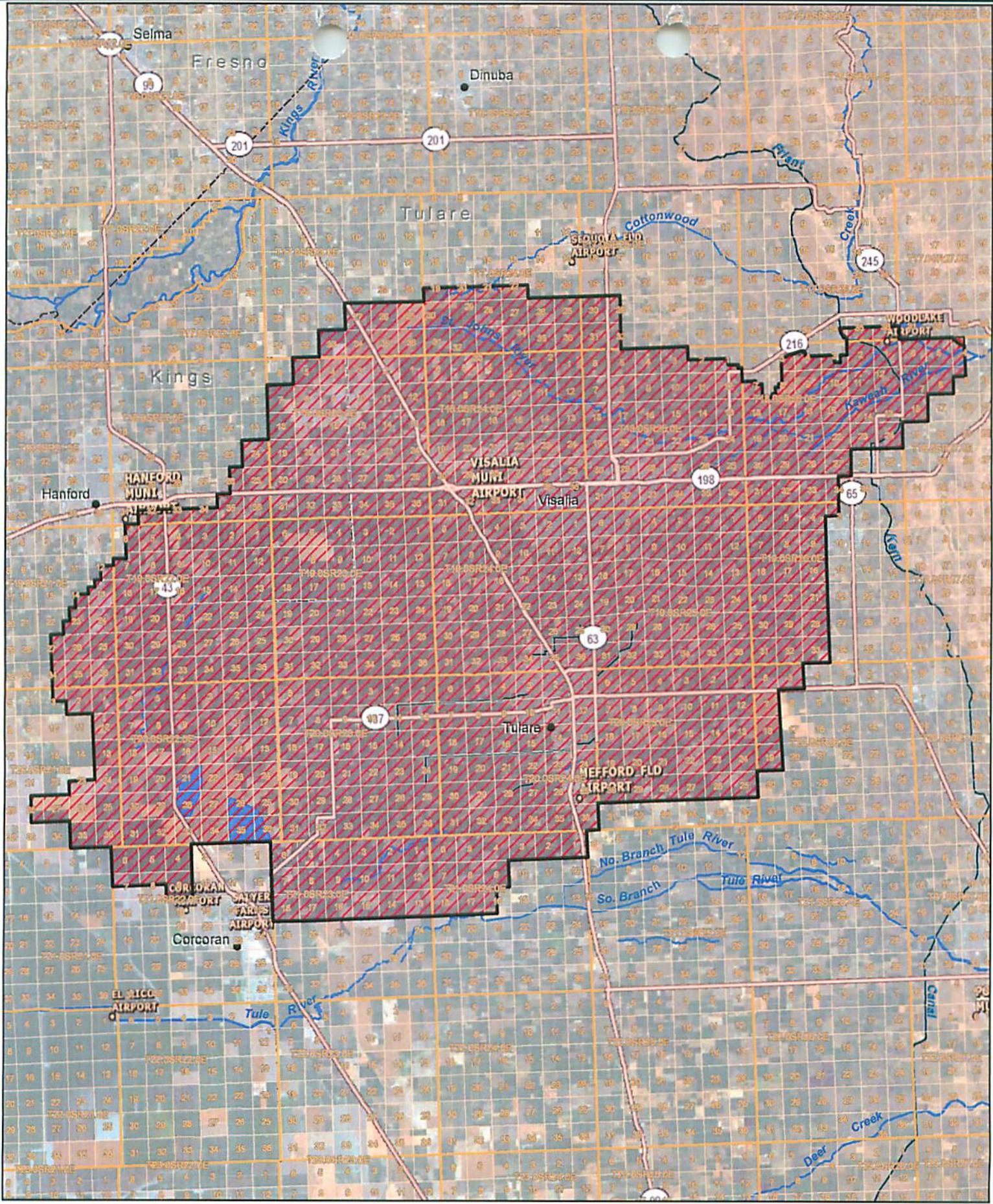
By: *Peter R. Anoye*  
ACTING Regional Director, Mid-Pacific Region  
FOR Bureau of Reclamation

KAWEAH DELTA WATER  
CONSERVATION DISTRICT

By: *Don Mills*  
President, Board of Directors

Attest:

By: *[Signature]*  
Secretary



-  District Boundary
-  Contractor's Service Area (Irrigation Only)
-  Contractor's Service Area (Irrigation and M&I)

**Kaweah Delta W.C.D.**  
 Contract No. I75r-180AD  
 Exhibit A  
 Friant 9 (d) Repayment



**EXHIBIT B**

**Rates and Charges**

This is a placeholder page. The Rates and Charges will be transmitted to the Contractor at a later date.

**Exhibit C-1**  
 Repayment Obligation - Lump Sum Option

**Friant Contractor:**  
**San Joaquin River Restoration Act**

**Kaweah Delta**

**Existing Capital Obligation (Article 1(m))** \$ **600,704.07**

**Irrigation portion of Existing Capital Obligation** \$ **600,704.07**

20yr CMT as of : **10/01/10** **3.400%**

Discount Rate (1/2 20yr CMT) **1.700%**

**Discounted Irrigation Capital** \$ **505,638.71**

**Non-Discounted M&I Portion of Existing Capital Obligation** \$ **-**

**Repayment Obligation - Lump Sum Option (per Article 7(a)(2)(A))** \$ **505,638.71**

Year	Irrigation Portion of Allocated Capital Cost	
	Beginning Balance	Straight Line Repayment
	2011	\$ 600,704
2012	\$ 570,669	\$ 30,035
2013	\$ 540,634	\$ 30,035
2014	\$ 510,598	\$ 30,035
2015	\$ 480,563	\$ 30,035
2016	\$ 450,528	\$ 30,035
2017	\$ 420,493	\$ 30,035
2018	\$ 390,458	\$ 30,035
2019	\$ 360,422	\$ 30,035
2020	\$ 330,387	\$ 30,035
2021	\$ 300,352	\$ 30,035
2022	\$ 270,317	\$ 30,035
2023	\$ 240,282	\$ 30,035
2024	\$ 210,246	\$ 30,035
2025	\$ 180,211	\$ 30,035
2026	\$ 150,176	\$ 30,035
2027	\$ 120,141	\$ 30,035
2028	\$ 90,106	\$ 30,035
2029	\$ 60,070	\$ 30,035
2030	\$ 30,035	\$ 30,035
		<u>\$ 600,704</u>

**Exhibit C-2**  
**Repayment Obligation - Installment Payment Option**

**Prinant Contractor:** Kaweah Delta

**Existing Capital Obligation (Article 1(m))** \$ **600,704.07**

**Irrigation Portion of Existing Capital Obligation** \$ **600,704.07**

**20yr CMT - 10/1/2010** **3.400%**  
**Discount Rate (1/2 20yr CMT)** **1.700%**

**Non-Discounted M&I Existing Capital Obligation** \$ **-**

**Installment Schedule**

	Payment Due Date	Irrigation Portion of Repayment Obligation	Non-discounted M&I Portion of Existing Capital Obligation	Repayment Obligation
1st Installment	5/1/2011	\$ 129,515.31	\$ -	\$ 129,515.31
2nd Installment	5/1/2012	\$ 129,495.75	\$ -	\$ 129,495.75
3rd Installment	5/1/2013	\$ 129,628.71	\$ -	\$ 129,628.71
4th Installment	1/31/2014	\$ 129,865.22	\$ -	\$ 129,865.22
<b>Total Repayment Obligation - Installment Option (per Article 7(a)(2)(A):</b>		<b>\$ 518,504.99</b>	<b>\$ -</b>	<b>\$ 518,504.99</b>

Year	Irrigation Portion of Allocated Capital Cost		Discounted Capital Amount			
	Beginning Balance	Straight Line Repayment	\$129,515.31	\$129,495.75	\$129,628.71	\$129,865.22
2011	\$ 600,704	\$ 30,035	\$ 30,035			
2012	\$ 570,669	\$ 30,035	\$ 6,307	\$ 23,728		
2013	\$ 540,634	\$ 30,035	\$ 6,307	\$ 7,013	\$ 16,715	
2014	\$ 510,598	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2015	\$ 480,563	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2016	\$ 450,528	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2017	\$ 420,493	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2018	\$ 390,458	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2019	\$ 360,422	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2020	\$ 330,387	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2021	\$ 300,352	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2022	\$ 270,317	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2023	\$ 240,282	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2024	\$ 210,246	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2025	\$ 180,211	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2026	\$ 150,176	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2027	\$ 120,141	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2028	\$ 90,106	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2029	\$ 60,070	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2030	\$ 30,035	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
	<b>\$ 600,704</b>	<b>\$ 149,876</b>	<b>\$ 149,966</b>	<b>\$ 150,236</b>	<b>\$ 150,627</b>	

**Exhibit D**  
Friant Surcharge Reduction Calculation

**Friant Contractor:**  
**San Joaquin River Restoration Act**

Kaweah Delta

Average Annual Delivery - Forecasted for 2020-2039*	5,595
<b>Total Projected deliveries (over 20 yr period)**</b>	<b>111,900</b>
Article 7(c)	111,900
20 yr CMT as of 10/1/2010	3.400%
1/2 20 yr CMT as of 10/1/2010	1.700%
Irrigation Portion of Existing Capital Obligation	\$600,704
NPV at Half CMT (Repayment Obligation)	\$505,639
NPV at Full CMT	\$430,761
<b>Financing Cost Offset: @ (Article 7(c)(1))</b>	<b>\$74,878</b>
NPV of FS Reduction	\$74,878
Difference between Financing Cost Offset and NPV of FS Reduction	\$0
<b>2020 Other Obligation Credit (FV of difference) (Art. 7(c)(2))***</b>	<b>\$0</b>

Year	CVPIA Friant				Reduction in Friant Surcharge			2020 Other Obligation Credit Calculation (Art. 7(c)(2))
	Irrigation portion of Allocated Capital Cost		Surcharges		Friant Surcharge Reduction per Article 7(c)(1)	Friant Surcharge due per A/F after Reduction	Projected Total Annual Credit	
	Beginning Balance	Straight Line Repayment	Surcharge per Acre- Foot Before Reduction					
2011	\$ 600,704	\$ 30,035	\$ 7.00	\$ 7.00		\$ 7.00	0 \$	-
2012	\$ 570,669	\$ 30,035	\$ 7.00	\$ 7.00		\$ 7.00	0 \$	-
2013	\$ 540,634	\$ 30,035	\$ 7.00	\$ 7.00		\$ 7.00	0 \$	-
2014	\$ 510,598	\$ 30,035	\$ 7.00	\$ 7.00		\$ 7.00	0 \$	-
2015	\$ 480,563	\$ 30,035	\$ 7.00	\$ 7.00		\$ 7.00	0 \$	-
2016	\$ 450,528	\$ 30,035	\$ 7.00	\$ 7.00		\$ 7.00	0 \$	-
2017	\$ 420,493	\$ 30,035	\$ 7.00	\$ 7.00		\$ 7.00	0 \$	-
2018	\$ 390,458	\$ 30,035	\$ 7.00	\$ 7.00		\$ 7.00	0 \$	-
2019	\$ 360,422	\$ 30,035	\$ 7.00	\$ 7.00		\$ 7.00	0 \$	-
2020	\$ 330,387	\$ 30,035	\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(\$7,054)	\$ -
2021	\$ 300,352	\$ 30,035	\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2022	\$ 270,317	\$ 30,035	\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2023	\$ 240,282	\$ 30,035	\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2024	\$ 210,246	\$ 30,035	\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2025	\$ 180,211	\$ 30,035	\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2026	\$ 150,176	\$ 30,035	\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2027	\$ 120,141	\$ 30,035	\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2028	\$ 90,106	\$ 30,035	\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2029	\$ 60,070	\$ 30,035	\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2030	\$ 30,035	\$ 30,035	\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2031			\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2032			\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2033			\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2034			\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2035			\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2036			\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2037			\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2038			\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
2039			\$ 7.00	\$ 7.00	(\$1.26)	\$ 5.74	(7,054)	
	\$ 600,704						(\$141,079)	

**Exhibit D**  
Friant Surcharge Reduction Calculation

**Footnotes**

\* Average annual delivery forecast indicated above is a mutually agreed upon estimate of deliveries during the period 2020-2039 for purposes of calculating the Friant Surcharge reduction and related credits only.

\*\* This figure represents the total cumulative deliveries the reduced surcharge is applicable to, but not beyond 2039. If cumulative actual deliveries exceed this amount prior to 2039, the full Friant Surcharge is applicable to deliveries in excess of this amount.

\*\*\* The difference represents the amount of financing costs that are not offset through the reduced Friant Surcharge computed on this schedule. Pursuant to Section 7(c)(2), this amount shall offset the Contractor's other outstanding or future obligations. After 2020, the contractor's other obligations shall be reduced in the following order to fully offset this amount: 1) Payments or prepayments due for O&M expenses and, to the extent applicable, 2) Additional Capital Obligation.

@ Amount of reduction in Friant Surcharge is computed using FPV of Financing Costs adjusted to Yr 2020. Annual Friant Surcharge reduction to fully offset Financing costs is computed and presented on per a/f basis. Friant surcharge may be reduced up to \$3 per a/f.

Friant Surcharge (FS) Reduction Calculations

FV of Total Financing Cost for Offset	\$	104,606
Annual Credit Target	\$	(7,054)
FS Reduction w/o limit	\$	(1.26)
FS Reduction limit	\$	(3.00)

EXHIBIT E

Restated Contract<sup>1</sup>

Irrigation and M&I  
Contract No. I75r-180AD

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES  
AND  
KAWEAH DELTA WATER CONSERVATION DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM FRIANT DIVISION AND  
FOR FACILITIES REPAYMENT

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<sup>1</sup> Pursuant to subdivision (b) of Article 2 of the Contract to which this exhibit is attached, this Exhibit "E" makes no substantive revisions to the Contract to which it is attached and is prepared solely as a matter of administrative convenience. In this Exhibit "E", references to "Contract" or "this Contract" refers to this Restated Contract.

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1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 Central Valley Project, California

5 CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 KAWEAH DELTA WATER CONSERVATION DISTRICT  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM FRIANT DIVISION AND  
10 FACILITIES REPAYMENT

11 THIS CONTRACT, made this 10<sup>th</sup> day of December, 2010, is entered  
12 into pursuant to the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary  
13 thereto, including but not limited to: the Act of August 26, 1937 (50 Stat. 844), as amended and  
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70  
15 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100  
16 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and Title  
17 X, Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), also referred to as the San Joaquin  
18 River Restoration Settlement Act hereinafter referred to as SJRRSA, all collectively hereinafter  
19 referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,  
20 hereinafter referred to as the United States and KAWEAH DELTA WATER CONSERVATION  
21 DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California,  
22 duly organized, existing, and acting pursuant to the laws thereof, with its principal place of  
23 business in California;

24 WITNESSETH, That

EXPLANATORY RECITALS

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[1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2<sup>nd</sup>] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant Division Facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

[3<sup>rd</sup>] WHEREAS, the United States and the Contractor, together with Ivanhoe Irrigation District, entered into Contract Number I75r-1809-LTR1A which established terms for the assignment of 1,200 acre-feet of Class 1 Water and 7,400 acre-feet of Class 2 Water from Ivanhoe Irrigation District, delivered to Ivanhoe Irrigation District under its Contract No. I75r-1809-LTR1 (“Existing Contract”), to the Contractor for delivery of Project Water from the Friant Division from March 1, 2010 through February 28, 2026, and is herein referred to as the “Assignment Contract”; and

[4<sup>th</sup>] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the United States has acquired water rights and other rights to the flows of the San Joaquin River, including without limitation the permits issued as the result of Decision 935 by the California

46 State Water Resource Control Board and the contracts described in subdivision (n) of Article 3  
47 of this Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers  
48 Project Water stored or flowing through Millerton Lake in accordance with State and Federal law  
49 for the benefit of Project Contractors in the Friant Division and for other specified Project  
50 purposes; and

51 [5th] WHEREAS, the water supplied to the Contractor pursuant to this Contract is  
52 Project Water developed through the exercise of the rights described in the fourth (4<sup>th</sup>)  
53 Explanatory Recital of this Contract; and

54 [6th] WHEREAS, as a result of litigation entitled “Natural Resources Defense Council,  
55 et al. v Kirk Rogers, et al.” No. CIV-S-88-1658LLK/GGH, certain contractors from the Friant  
56 Division entered into a Stipulation of Settlement dated September 13, 2006, (the “Settlement”),  
57 which settlement prescribes a Restoration Goal and a Water Management Goal and which  
58 Settlement was subsequently confirmed and implemented through the SJRRSA; and

59 [7th] WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the  
60 Existing Contract to a repayment contract under subsection (d) of Section 9 of the Act of August  
61 4, 1939, no later than December 31, 2010, and further directs that such contract shall require the  
62 accelerated repayment of the Contractor’s allocated share of construction costs, either as a lump  
63 sum payment by January 31, 2011 or in annual installments by January 31, 2014, which funds  
64 will in turn be made available for implementation of the Settlement and SJRRSA, and which  
65 costs otherwise would have been payable through annual water rates, with full repayment by  
66 2030; and

67 [8<sup>th</sup>] WHEREAS, such repayment of costs will assist the United States with  
68 implementation of actions required under the Settlement and the SJRRSA and provide the  
69 Contractor the benefits provided in Section 10010 of the SJRRSA; and

70 [9<sup>th</sup>] WHEREAS, subsection (4) of Section 1 of the Act of July 2, 1956 (1956 Act)  
71 directs the Secretary to provide that the other party to any contract entered into pursuant to  
72 subsection (d) of Section 9 of the Act of August 4, 1939 (repayment contract) or pursuant to  
73 subsection (e) of Section 9 of the Act of August 4, 1939 (water service contract) shall “have the  
74 first right (to which the rights of the holders of any other type of irrigation water contract shall be  
75 subordinate) to a stated share or quantity of the project’s available water supply for beneficial  
76 use on the irrigable lands within the boundaries of, or owned by, the party and a permanent right  
77 to such share or quantity upon completion of payment of the amount assigned for ultimate  
78 return” by the contractor subject to fulfillment of all obligations under the contract; and

79 [10<sup>th</sup>] WHEREAS, among other things, this Contract includes provisions granting the  
80 Contractor the permanent right described in the ninth (9<sup>th</sup>) Explanatory Recital; and

81 [11<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the  
82 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for  
83 reasonable and beneficial use and/or has demonstrated projected future demand for water use  
84 such that the Contractor has the capability and expects to utilize fully for reasonable and  
85 beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;  
86 and

87 [12<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon  
88 by urban and agricultural areas within California for more than fifty (50) years and is considered  
89 by the Contractor as an essential portion of its water supply; and

90 [13<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project,  
91 including the Contractor's, depend upon the continued availability of water, including water  
92 service from the Central Valley Project; and

93 [14<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
94 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
95 Project for all Project purposes; and

96 [15<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
97 provide for reliable Project Water supplies; to control costs of those supplies; to achieve  
98 repayment of the Central Valley Project as required by law; to guard reasonably against Project  
99 Water shortages; to achieve a reasonable balance among competing demands for use of Project  
100 Water; and to comply with all applicable environmental statutes, all consistent with the legal  
101 obligations of the United States relative to the Central Valley Project; and

102 [16<sup>th</sup>] WHEREAS, any time during the Year the Contracting Officer determines that a  
103 need exists to evacuate water from Millerton Lake in order to prevent or minimize spill or to  
104 meet flood control criteria (currently referred to as "uncontrolled season"), taking into  
105 consideration, among other things, anticipated upstream reservoir operations and the most  
106 probable forecast of snowmelt and runoff projections for the upper San Joaquin River, Friant  
107 Division Project Contractors utilize a portion of their undependable Class 2 Water in their

108 service areas to, among other things, assist in the management and alleviation of groundwater  
109 overdraft in the Friant Division service area, provide opportunities for restoration of the San  
110 Joaquin River below Friant Dam, minimize flooding along the San Joaquin River, encourage  
111 optimal water management, and maximize the reasonable and beneficial use of the water; and

112 [17<sup>th</sup>] WHEREAS, the parties desire and intend that this Contract not provide a  
113 disincentive to the Friant Division Project Contractors continuing to carry out the beneficial  
114 activities set out in the Explanatory Recital immediately above; and

115 [18<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all  
116 of its obligations under the Assignment Contract.

117 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein  
118 contained, it is hereby mutually agreed by the parties hereto as follows:

119 DEFINITIONS

120 1. When used herein, unless otherwise distinctly expressed or manifestly  
121 incompatible with the intent of the parties as expressed in this Contract, the term:

122 (a) "Additional Capital Obligation" shall mean any additional construction  
123 costs or other capitalized costs incurred after the effective date of this Contract or not reflected in  
124 the Existing Capital Obligation as provided in Section 10010(a)(3)(B) of the SJRRSA and any  
125 amounts payable by Contractor as determined through the final adjustment described and  
126 required by Section 10010(b) of the SJRRSA;

127 (b) "Calendar Year" shall mean the period January 1 through December 31,  
128 both dates inclusive;

129 (c) "Charges" shall mean the payments required by Federal Reclamation law  
130 in addition to the Rates specified in this Contract as determined annually by the Contracting  
131 Officer pursuant to this Contract and consistent with the SJRRSA;

132 (d) "Class 1 Water" shall mean that supply of water stored in or flowing  
133 through Millerton Lake which, subject to the contingencies hereinafter described in Articles 3,  
134 12, and 13 of this Contract, will be available for delivery from Millerton Lake and the  
135 Friant-Kern and Madera Canals as a dependable water supply during each Year;

136 (e) "Class 2 Water" shall mean that supply of water which can be made  
137 available subject to the contingencies hereinafter described in Articles 3, 12, and 13 of this  
138 Contract for delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to  
139 the supply of Class 1 Water. Because of its uncertainty as to availability and time of occurrence,  
140 such water will be undependable in character and will be furnished only if, as, and when it can be  
141 made available as determined by the Contracting Officer;

142 (f) "Condition of Shortage" shall mean a condition respecting the Project  
143 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the  
144 Contract Total;

145 (g) "Contracting Officer" shall mean the Secretary of the Interior's duly  
146 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law  
147 or regulation;

148 (h) "Contract Total" shall mean the maximum amount of Class 1 Water plus  
149 the maximum amount of Class 2 Water specified in subdivision (a) of Article 3 of this Contract

150 and is the stated share or quantity of the Project's available water supply to which the Contractor  
151 has a permanent right in accordance with the 1956 Act and the terms of this Contract, due to the  
152 Contractor's complete payment of the Repayment Obligation, notwithstanding any Additional  
153 Capital Obligation that may later be established, which right shall not be disturbed so long as the  
154 Contractor fulfills all of its obligations under this Contract;

155 (i) "Contractor's Service Area" shall mean the area to which the Contractor is  
156 permitted to provide Project Water under this Contract as described in Exhibit "A" attached  
157 hereto, which may be modified from time to time in accordance with Article 36 of this Contract  
158 without amendment of this Contract;

159 (j) "CVPIA" shall mean the Central Valley Project Improvement Act, Title  
160 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

161 (k) Omitted;

162 (l) Omitted;

163 (m) "Existing Capital Obligation" shall mean the remaining amount of  
164 construction costs of the Contractor identified in the Central Valley Project Irrigation Water  
165 Rates and/or Municipal and Industrial Water Rates, respectively, dated January 25, 2007, as  
166 adjusted to reflect payments not reflected in such schedule, pursuant to Section 10010(a)(3)(A)  
167 of the SJRRSA. The Contracting Officer has computed the Existing Capital Obligation in a  
168 manner consistent with the SJRRSA and such amount is set forth in Exhibits "C-1" and "C-2",  
169 incorporated herein by reference;

170                   (n)     “Financing Costs”, for purposes of computing the reduction of certain  
171 charges as specified in subdivision (c) of Article 7 of this Contract, shall mean the difference  
172 between the net present value of the Existing Capital Obligation discounted using the full  
173 Treasury rate and the Existing Capital Obligation discounted using one-half the Treasury rate, as  
174 set forth in Section 10010(d)(3) of the SJRRA;

175                   (o)     Omitted;

176                   (p)     Omitted;

177                   (q)     Omitted;

178                   (r)     “Irrigation Water” shall mean water made available from the Project that  
179 is used primarily in the production of agricultural crops or livestock, including domestic use  
180 incidental thereto, and watering of livestock;

181                   (s)     Omitted;

182                   (t)     “Long Term Historic Average” shall mean the average of the final forecast  
183 of Water Made Available to the Contractor pursuant to this Contract and the contracts referenced  
184 in the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) Explanatory Recitals of this Contract;

185                   (u)     “Municipal and Industrial (M&I) Water” shall mean Water Made  
186 Available from the Project other than Irrigation Water made available to the Contractor. M&I  
187 Water shall include water used for human use and purposes such as the watering of landscaping  
188 or pasture for animals (e.g., horses) which are kept for personal enjoyment or water delivered to  
189 land holdings operated in units of less than five (5) acres unless the Contractor establishes to the

190 satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a  
191 use described in subdivision (r) of this Article of this Contract;

192 (v) Omitted;

193 (w) "Operation and Maintenance" or "O&M" shall mean normal and  
194 reasonable care, control, operation, repair, replacement (other than Capital replacement), and  
195 maintenance of Project facilities;

196 (x) "Operating Non-Federal Entity" shall mean the Friant Water Authority, or  
197 its successor, a Non-Federal entity, which has the obligation to operate and maintain all or a  
198 portion of the Friant Division Facilities pursuant to an agreement with the United States and  
199 which may have funding obligations with respect thereto;

200 (y) Omitted;

201 (z) "Project" shall mean the Central Valley Project owned by the United  
202 States and managed by the Department of the Interior, Bureau of Reclamation;

203 (aa) "Project Contractors" shall mean all parties who have a long-term water  
204 service contract or repayment contract for Project Water from the Project with the United States  
205 pursuant to Federal Reclamation law;

206 (bb) "Project Water" shall mean all water that is developed, diverted, stored, or  
207 delivered by the Secretary in accordance with the statutes authorizing the Project and in  
208 accordance with the terms and conditions of water rights acquired pursuant to California law;

209 (cc) "Rates" shall mean the payments for O&M costs as determined annually  
210 by the Contracting Officer in accordance with the then-existing applicable water ratesetting

211 policies for the Project, as described in subdivision (a) of Article 7 of this Contract and  
212 illustrated in Exhibit "B", attached hereto;

213 (dd) "Recovered Water Account" shall mean the program, as defined in the  
214 Settlement, to make water available to all of the Friant Division Project Contractors who provide  
215 water to meet interim flows or restoration flows for the purpose of reducing or avoiding the  
216 impact of the interim flows and restoration flows on such contractors;

217 (ee) "Repayment Obligation", as provided in subdivision (a)(2)(A) of Article 7  
218 of this Contract, shall be the Existing Capital Obligation, as defined herein, discounted by  
219 one-half of the Treasury rate and computed consistent with the provisions of Section  
220 10010(a)(3)(A) of the SJRRSA to be paid as either a lump sum payment by January 31, 2011 or  
221 in approximately equal annual installments by January 31, 2014;

222 (ff) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
223 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
224 through any agency of the Department of the Interior;

225 (gg) "Settlement" shall mean the Stipulation of Settlement dated September 13,  
226 2006, the Order Approving Stipulation of Settlement, and the Judgment and further orders issued  
227 by the Court pursuant to the terms and conditions of the Settlement in Natural Resources  
228 Defense Council, et al. v. Rodgers, et al., No. CIV-S-88-1658 LLJ/GGH;

229 (hh) Omitted;

230 (ii) "Water Delivered" or "Delivered Water" shall mean Project Water  
231 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting  
232 Officer;

233 (jj) "Water Made Available" shall mean the estimated amount of Project  
234 Water that can be delivered to the Contractor for the upcoming Year as declared by the  
235 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

236 (kk) "Water Management Goal" shall mean the goal of the Settlement to  
237 reduce or avoid adverse water supply impacts to all the Friant Division Project Contractors that  
238 may result from the interim flows and restoration flows provided for in the Settlement;

239 (ll) "Water Scheduled" shall mean Project Water made available to the  
240 Contractor for which times and quantities for delivery have been established by the Contractor  
241 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

242 (mm) "Year" shall mean the period from and including March 1 of each  
243 Calendar Year through the last day of February of the following Calendar Year.

244 EFFECTIVE DATE OF CONTRACT

245 2. (a) This Contract shall become effective on the date first hereinabove written  
246 and shall continue so long as the Contractor is making the annual payments required herein and  
247 paying any other amounts owing under this Contract and applicable law, unless it is terminated  
248 by the Contracting Officer by reason of a material uncured breach by the Contractor; Provided,  
249 That the Contracting Officer shall not seek to terminate this Contract by reason of an asserted  
250 material uncured breach by the Contractor unless it has first provided at least sixty (60) days

251 written notice of the asserted breach to the Contractor and the Contractor has failed to cure such  
252 breach (or to diligently commence curative actions satisfactory to the Contracting Officer for a  
253 breach that cannot be fully cured within sixty (60) days) within the sixty (60)-day notice period;  
254 Provided further, That this Contract may be terminated at any time by mutual consent of the  
255 parties hereto.

256 (b) The Contractor has paid the Repayment Obligation, and notwithstanding  
257 any Additional Capital Obligation that may later be established, the tiered pricing component and  
258 the acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation law,  
259 shall no longer be applicable to the Contractor.

260 (c) This Contract supersedes in its entirety and is intended to replace in full  
261 the Assignment Contract; Provided, That if this Contract is terminated or determined to be  
262 invalid or unenforceable for any reason other than a material uncured breach of this Contract by  
263 the Contractor, the Assignment Contract shall not be superseded and shall be in full force and  
264 effect. Notwithstanding the foregoing, the right of Ivanhoe Irrigation District to reversion as  
265 described in Paragraph 6 of the Assignment Contract is hereby expressly preserved.

266 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

267 3. (a) During each Year, consistent with all applicable State water rights,  
268 permits, and licenses, Federal law, the Settlement including the SJRRSA, and subject to the  
269 provisions set forth in Articles 12 and 13 of this Contract, the Contracting Officer shall make  
270 available for delivery to the Contractor from the Project 1,200 acre-feet of Class 1 Water and  
271 7,400 acre-feet of Class 2 Water for irrigation and M&I purposes. The quantity of Water

272 Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for  
273 pursuant to the provisions of Articles 4 and 7 of this Contract.

274 (b) The Contractor has paid the Repayment Obligation, and notwithstanding  
275 any Additional Capital Obligation that may later be established, the Contractor has a permanent  
276 right to the Contract Total in accordance with the 1956 Act and the terms of this Contract. This  
277 right shall not be disturbed so long as the Contractor fulfills all of its obligations hereunder. The  
278 quantity of water made available for delivery in any given Year shall remain subject to the terms  
279 and conditions of subdivision (a) of this Article of this Contract.

280 (c) The Contractor shall utilize the Project Water in accordance with all  
281 applicable legal requirements.

282 (d) The Contractor shall make reasonable and beneficial use of all Project  
283 Water or other water furnished pursuant to this Contract. Groundwater recharge programs,  
284 groundwater banking programs, surface water storage programs, and other similar programs  
285 utilizing Project Water or other water furnished pursuant to this Contract conducted within the  
286 Contractor's Service Area which are consistent with applicable State law and result in use  
287 consistent with applicable Federal Reclamation law will be allowed; Provided, That any direct  
288 recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted  
289 pursuant to Article 27 of this Contract; Provided further, That such Water Conservation Plan  
290 demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a  
291 long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such  
292 uses and in compliance with Federal Reclamation law. Groundwater recharge programs,

293 groundwater banking programs, surface water storage programs, and other similar programs  
294 utilizing Project Water or other water furnished pursuant to this Contract conducted outside the  
295 Contractor's Service Area may be permitted upon written approval of the Contracting Officer,  
296 which approval will be based upon environmental documentation, Project Water rights, and  
297 Project operational concerns. The Contracting Officer will address such concerns in regulations,  
298 policies, or guidelines.

299 (e) The Contractor, through this Contract, shall comply with requirements  
300 applicable to the Contractor in biological opinion(s) prepared as a result of the consultation  
301 regarding the execution of the Existing Contract undertaken pursuant to Section 7 of the  
302 Endangered Species Act of 1973, as amended, as well as the requirements of any other biological  
303 opinions applicable to Project Water delivery under this Contract, that are within the  
304 Contractor's legal authority to implement. The Contractor shall comply with the limitations or  
305 requirements imposed by environmental documentation applicable to the Contractor and within  
306 its legal authority to implement regarding specific activities, including conversion of Irrigation  
307 Water to M&I Water. Nothing herein shall be construed to prevent the Contractor from  
308 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any  
309 biological opinion or other environmental documentation referred to in this Article of this  
310 Contract.

311 (f) Subject to subdivisions (l) and (n) of this Article of this Contract,  
312 following the declaration of Water Made Available under Article 4 of this Contract, the  
313 Contracting Officer will make a determination whether Project Water, or other water available to

314 the Project, can be made available to the Contractor in addition to the Contract Total in this  
315 Article of this Contract during the Year without adversely impacting the Project or other Project  
316 Contractors and consistent with the Secretary's legal obligations. At the request of the  
317 Contractor, the Contracting Officer will consult with the Contractor prior to making such a  
318 determination. Subject to subdivisions (l) and (n) of this Article of this Contract, if the  
319 Contracting Officer determines that Project Water, or other water available to the Project, can be  
320 made available to the Contractor, the Contracting Officer will announce the availability of such  
321 water and shall so notify the Contractor as soon as practical. The Contracting Officer will  
322 thereafter meet with the Contractor and other Project Contractors capable of taking such water to  
323 determine the most equitable and efficient allocation of such water. If the Contractor requests  
324 the delivery of any quantity of such water, the Contracting Officer shall make such water  
325 available to the Contractor in accordance with applicable statutes, regulations, guidelines, and  
326 policies.

327 (g) The Contractor may request permission to reschedule for use during the  
328 subsequent Year some or all of the Water Made Available to the Contractor during the current  
329 Year referred to as "carryover." The Contractor may request permission to use during the  
330 current Year a quantity of Project Water which may be made available by the United States to  
331 the Contractor during the subsequent Year referred to as "pre-use." The Contracting Officer's  
332 written approval may permit such uses in accordance with applicable statutes, regulations,  
333 guidelines, and policies.

334           (h)     The Contractor's right pursuant to Federal Reclamation law and applicable  
335 State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract  
336 shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this  
337 Contract. Nothing in the preceding sentence shall affect the Contracting Officer's ability to  
338 impose shortages under Article 12 or subdivision (b) of Article 13 of this Contract.

339           (i)     Project Water furnished to the Contractor pursuant to this Contract may be  
340 delivered for purposes other than those described in subdivisions (r) and (u) of Article 1 of this  
341 Contract upon written approval by the Contracting Officer in accordance with the terms and  
342 conditions of such approval.

343           (j)     The Contracting Officer shall make reasonable efforts to protect the water  
344 rights and other rights described in the fifth (5th) Explanatory Recital of this Contract and to  
345 provide the water available under this Contract. The Contracting Officer shall not object to  
346 participation by the Contractor, in the capacity and to the extent permitted by law, in  
347 administrative proceedings related to the water rights and other rights described in the fifth (5th)  
348 Explanatory Recital of this Contract; Provided however, That the Contracting Officer retains the  
349 right to object to the substance of the Contractor's position in such a proceeding. Provided  
350 further, that in such proceedings the Contracting Officer shall recognize the Contractor has a  
351 legal right under the terms of this Contract to use Project Water.

352           (k)     Project Water furnished to the Contractor during any month designated in  
353 a schedule or revised schedule submitted by the Contractor and approved by the Contracting  
354 Officer shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent

355 that Class 1 Water is called for in such schedule for such month and shall be deemed to have  
356 been accepted as Class 2 Water to the extent Class 2 Water is called for in such schedule for such  
357 month. If in any month the Contractor diverts a quantity of water in addition to the total amount  
358 of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised  
359 schedule for such month, such additional diversions shall be charged first against the  
360 Contractor's remaining Class 2 Water supply available in the current Year. To the extent the  
361 Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to  
362 account for such additional diversions, such additional diversions shall be charged against the  
363 Contractor's remaining Class 1 Water supply available in the current Year. To the extent the  
364 Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year  
365 are not sufficient to account for such additional diversions, such additional diversions shall be  
366 charged first against the Contractor's available Class 2 Water supply and then against the  
367 Contractor's available Class 1 Water supply, both for the following Year. Payment for all  
368 additional diversions of water shall be made in accordance with Article 7 of this Contract.

369 (l) If the Contracting Officer determines there is a Project Water supply  
370 available at Friant Dam as the result of an unusually large water supply not otherwise storable for  
371 Project purposes or infrequent and otherwise unmanaged flood flows of short duration, such  
372 water will be made available to the Contractor and others under Section 215 of the Act of  
373 October 12, 1982, pursuant to the priorities specified below if the Contractor enters into a  
374 temporary contract with the United States not to exceed one (1) year for the delivery of such  
375 water or as otherwise provided for in Federal Reclamation law and associated regulations. Such

376 water may be identified by the Contractor either (i) as additional water to supplement the supply  
377 of Class 1 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon  
378 written notification to the Contracting Officer, as water to be credited against the Contractor's  
379 Class 2 Water supply available pursuant to this Contract. The Contracting Officer shall make  
380 water determined to be available pursuant to this subsection according to the following priorities:  
381 first, to contractors for Class 1 Water and/or Class 2 Water within the Friant Division; second, to  
382 contractors in the Cross Valley Division of the Project. The Contracting Officer will consider  
383 requests from other parties for Section 215 Water for use within the area identified as the Friant  
384 Division service area in the environmental assessment developed in connection with the  
385 execution of the Existing Contract.

386 (m) Nothing in this Contract, nor any action or inaction of the Contractor or  
387 Contracting Officer in connection with the implementation of this Contract, is intended to  
388 override, modify, supersede or otherwise interfere with any term or condition of the water rights  
389 and other rights referred in the fifth (5th) Explanatory Recital of this Contract.

390 (n) The rights of the Contractor under this Contract are subject to the terms of  
391 the contract for exchange waters, dated July 27, 1939, between the United States and the San  
392 Joaquin and Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred  
393 to as the Exchange Contractors), Contract No. I1r-1144, as amended. The United States agrees  
394 that it will not deliver to the Exchange Contractors thereunder waters of the San Joaquin River  
395 unless and until required by the terms of said contract, and the United States further agrees that it  
396 will not voluntarily and knowingly determine itself unable to deliver to the Exchange

397 Contractors entitled thereto from water that is available or that may become available to it from  
398 the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta those quantities  
399 required to satisfy the obligations of the United States under said Exchange Contract and under  
400 Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract I1r-1145,  
401 dated July 27, 1939).

402 (o) Pursuant to and consistent with section 10004 of SJRRSA and Paragraph  
403 16 of the Settlement, the Contracting Officer is required to develop and implement a plan for  
404 recirculation, recapture, reuse, exchange or transfer of water released for restoration flows or  
405 interim flows, as those terms are defined in the Settlement, to reduce or avoid impacts to water  
406 deliveries caused by said restoration flows or interim flows and water developed through such  
407 activities may be made available (i) to the Contractor without the need of an additional contract,  
408 and/or (ii) to others on behalf of the Contractor under terms mutually acceptable to the  
409 Contractor and the Contracting Officer that are consistent with the Water Management Goal.

410 TIME FOR DELIVERY OF WATER

411 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer  
412 shall announce the Contracting Officer's initial declaration of the Water Made Available. The  
413 declaration will be updated monthly and more frequently if necessary, based on then-current  
414 operational and hydrologic conditions and a new declaration with changes, if any, to the Water  
415 Made Available will be made. The Contracting Officer shall provide forecasts of Project  
416 operations and the basis of the estimate, with relevant supporting information, upon the written  
417 request of the Contractor. Concurrently with the declaration of the Water Made Available, the

418 Contracting Officer shall provide the Contractor with the updated Long Term Historic Average.  
419 The declaration of Project operations will be expressed in terms of both Water Made Available  
420 and the Long Term Historic Average.

421 (b) On or before each March 1 and at such other times as necessary, the  
422 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the  
423 Contracting Officer, showing the monthly quantities of Project Water to be delivered by the  
424 United States to the Contractor pursuant to this Contract for the Year commencing on such  
425 March 1. The Contracting Officer shall use all reasonable means to deliver Project Water  
426 according to the approved schedule for the Year commencing on such March 1.

427 (c) The Contractor shall not schedule Project Water in excess of the quantity  
428 of Project Water the Contractor intends to put to reasonable and beneficial use within the  
429 Contractor's Service Area, or to sell, transfer or exchange pursuant to Article 10 of this Contract  
430 or bank pursuant to subdivision (d) of Article 3 of this Contract during any Year.

431 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this  
432 Contract, the United States shall deliver Project Water to the Contractor in accordance with the  
433 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any  
434 written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable  
435 time prior to the date(s) on which the requested change(s) is/are to be implemented; Provided,  
436 That the total amount of water requested in that schedule or revision does not exceed the  
437 quantities announced by the Contracting Officer pursuant to the provisions of subdivision (a) of  
438 Article 3 of this Contract, and the Contracting Officer determines that there will be sufficient

439 capacity available in the appropriate Friant Division Facilities to deliver the water in accordance  
440 with that schedule; Provided further, That the Contractor shall not schedule the delivery of any  
441 water during any period as to which the Contractor is notified by the Contracting Officer or  
442 Operating Non-Federal Entity that Project facilities required to make deliveries to the Contractor  
443 will not be in operation because of scheduled O&M.

444 (e) The Contractor may, during the period from and including November 1 of  
445 each Year through and including the last day of February of that Year, request delivery of any  
446 amount of the Class 1 Water estimated by the Contracting Officer to be made available to it  
447 during the following Year. The Contractor may, during the period from and including January 1  
448 of each Year (or such earlier date as may be determined by the Contracting Officer) through and  
449 including the last day of February of that Year, request delivery of any amount of Class 2 Water  
450 estimated by the Contracting Officer to be made available to it during the following Year. Such  
451 water shall hereinafter be referred to as pre-use water. Such request must be submitted in writing  
452 by the Contractor for a specified quantity of pre-use and shall be subject to the approval of the  
453 Contracting Officer. Payment for pre-use water so requested shall be at the appropriate Rate(s)  
454 for the following Year in accordance with Article 7 of this Contract and shall be made in  
455 advance of delivery of any pre-use water. The Contracting Officer shall deliver such pre-use  
456 water in accordance with a schedule or any revision thereof submitted by the Contractor and  
457 approved by the Contracting Officer, to the extent such water is available and to the extent such  
458 deliveries will not interfere with the delivery of Project Water entitlements to other Friant  
459 Division contractors or the physical maintenance of the Project facilities. The quantities of

460 pre-use Water Delivered pursuant to this subdivision shall be deducted from the quantities of  
461 water that the Contracting Officer would otherwise be obligated to make available to the  
462 Contractor during the following Year; Provided, That the quantity of pre-use water to be  
463 deducted from the quantities of either Class 1 Water or Class 2 Water to be made available to the  
464 Contractor in the following Year shall be specified by the Contractor at the time the pre-use  
465 water is requested or as revised in its first schedule for the following Year submitted in  
466 accordance with subdivision (b) of this Article of this Contract, based on the availability of the  
467 following Year water supplies as determined by the Contracting Officer.

468 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

469 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
470 Contract shall be delivered to the Contractor at a point or points of delivery either on Project  
471 facilities or another location or locations mutually agreed to in writing by the Contracting Officer  
472 and the Contractor.

473 (b) The Contracting Officer, the Operating Non-Federal Entity, or other  
474 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of  
475 water in the Friant-Kern Canal to deliver Project Water to the Contractor at specific turnouts  
476 established pursuant to subdivision (a) of this Article of this Contract.

477 (c) The Contractor shall not deliver Project Water to land outside the  
478 Contractor's Service Area unless approved in advance by the Contracting Officer. The  
479 Contractor shall deliver Project Water in accordance with applicable Federal Reclamation law.

480           (d)     All Water Delivered to the Contractor pursuant to this Contract shall be  
481 measured and recorded with equipment furnished, installed, operated, and maintained by the  
482 United States, the Operating Non-Federal Entity or other appropriate entity as designated by the  
483 Contracting Officer (hereafter “other appropriate entity”) at the point or points of delivery  
484 established pursuant to subdivision (a) of this Article of this Contract. Upon the request of either  
485 party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the  
486 responsible Operating Non-Federal Entity, the accuracy of such measurements and shall take any  
487 necessary steps to adjust any errors appearing therein. For any period of time when accurate  
488 measurements have not been made, the Contracting Officer shall consult with the Contractor and  
489 the responsible Operating Non-Federal Entity prior to making a final determination of the  
490 quantity delivered for that period of time.

491           (e)     Neither the Contracting Officer nor any Operating Non-Federal Entity  
492 shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project  
493 Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified  
494 in subdivision (a) of this Article of this Contract. The Contractor shall indemnify the United  
495 States, its officers, employees, agents, and assigns on account of damage or claim of damage of  
496 any nature whatsoever for which there is legal responsibility, including property damage,  
497 personal injury, or death arising out of or connected with the control, carriage, handling, use,  
498 disposal, or distribution of such Project Water beyond such delivery points, except for any  
499 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its  
500 officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity,

501 with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct  
502 of the Contracting Officer or any of its officers, employees, agents, or assigns, including any  
503 responsible Operating Non-Federal Entity; (iii) negligence of the Contracting Officer or any of  
504 its officers, employees, agents, or assigns including any responsible Operating Non-Federal  
505 Entity; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated  
506 by the United States or responsible Operating Non-Federal Entity; Provided, That the Contractor  
507 is not the Operating Non-Federal Entity that owned or operated the malfunctioning facility(ies)  
508 from which the damage claim arose.

509 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

510 6. (a) The Contractor has established a measurement program satisfactory to the  
511 Contracting Officer; all surface water delivered for irrigation purposes within the Contractor's  
512 Service Area is measured at each agricultural turnout; and water delivered for M&I purposes is  
513 measured at each M&I service connection. The water measuring devices or water measuring  
514 methods of comparable effectiveness must be acceptable to the Contracting Officer. The  
515 Contractor shall be responsible for installing, operating, and maintaining and repairing all such  
516 measuring devices and implementing all such water measuring methods at no cost to the United  
517 States. The Contractor shall use the information obtained from such water measuring devices or  
518 water measuring methods to ensure its proper management of the water, to bill water users for  
519 water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes  
520 by customer class as defined in the Contractor's water conservation plan provided for in Article  
521 27 of this Contract. Nothing herein contained, however, shall preclude the Contractor from

522 establishing and collecting any charges, assessments, or other revenues authorized by California  
523 law.

524 (b) To the extent the information has not otherwise been provided, upon  
525 execution of this Contract, the Contractor shall provide to the Contracting Officer a written  
526 report describing the measurement devices or water measuring methods being used or to be used  
527 to implement subdivision (a) of this Article of this Contract and identifying the agricultural  
528 turnouts and the M&I service connections or alternative measurement programs approved by the  
529 Contracting Officer, at which such measurement devices or water measuring methods are being  
530 used, and, if applicable, identifying the locations at which such devices and/or methods are not  
531 yet being used including a time schedule for implementation at such locations. The Contracting  
532 Officer shall advise the Contractor in writing within sixty (60) days as to the adequacy of, and  
533 necessary modifications, if any, of the measuring devices or water measuring methods identified  
534 in the Contractor's report and if the Contracting Officer does not respond in such time, they shall  
535 be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring  
536 devices or methods are inadequate, the parties shall within sixty (60) days following the  
537 Contracting Officer's response, negotiate in good faith the earliest practicable date by which the  
538 Contractor shall modify said measuring devices and/or measuring methods as required by the  
539 Contracting Officer to ensure compliance with subdivision (a) of this Article of this Contract.

540 (c) All new surface water delivery systems installed within the Contractor's  
541 Service Area after the effective date of this Contract shall also comply with the measurement  
542 provisions described in subdivision (a) of this Article of this Contract.

543 (d) The Contractor shall inform the Contracting Officer and the State of  
544 California in writing by April 30 of each Year of the monthly volume of surface water delivered  
545 within the Contractor's Service Area during the previous Year.

546 (e) The Contractor shall inform the Contracting Officer and the Operating  
547 Non-Federal Entity on or before the twentieth (20<sup>th</sup>) calendar day of each month of the quantity  
548 of Irrigation and M&I Water taken during the preceding month.

549 RATES, METHOD OF PAYMENT FOR WATER,  
550 AND ACCELERATED REPAYMENT OF FACILITIES

551 7. (a) The Contractor's cost obligations for all Delivered Water shall be  
552 determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted  
553 in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the  
554 SJRRSA, and such ratesetting policies shall be amended, modified, or superseded only through a  
555 public notice and comment procedure; (ii) applicable Federal Reclamation law and associated  
556 rules and regulations, or policies; and (iii) other applicable provisions of this Contract.

557 (1) The Contractor shall pay the United States as provided for in this  
558 Article of this Contract for the Delivered Water at Rates and Charges determined in accordance  
559 with policies for Irrigation Water and M&I Water. The Contractor's Rates shall be established to  
560 recover its estimated reimbursable costs included in the O&M component of the Rate and  
561 amounts established to recover other charges and deficits, other than the construction costs. The  
562 Rates for O&M costs and Charges shall be adjusted, as appropriate, in accordance with the  
563 provisions of the SJRRSA.

564 (2) Omitted.

565 (A) Omitted.

566 (B) Project construction costs or other capitalized costs

567 attributable to capital additions to the Project incurred after the effective date of this Contract or

568 that are not reflected in the schedules referenced in Exhibits "C-1" and "C-2" and properly

569 assignable to the Contractor, shall be repaid as prescribed by the SJRRSA without interest except

570 as required by law. Consistent with Federal Reclamation law, interest shall continue to accrue

571 on the M&I portion of unpaid Project construction costs or other capitalized cost assigned to the

572 Contractor until such costs are paid. Increases or decreases in Project construction costs or other

573 capitalized costs assigned to the Contractor caused solely by annual adjustment of Project

574 construction costs or other capitalized costs assigned to each Central Valley Project contractor by

575 the Secretary shall not be considered in determining the amounts to be paid pursuant to this

576 subdivision (a)(2)(B), but will be considered under subdivision (b) of this Article. A separate

577 repayment agreement shall be established by the Contractor and the Contracting Officer to

578 accomplish repayment of all additional Project construction costs or other capitalized costs

579 assigned to the Contractor within the timeframe prescribed by the SJRRSA subject to the

580 following:

581 (1) If the collective annual Project construction costs or

582 other capitalized costs that are incurred after the effective date of this Contract and properly

583 assignable to the contractors are less than \$5,000,000, then the portion of such costs properly

584 assignable to the Contractor shall be repaid in not more than five (5) years after notification of

585 the allocation. This amount is the result of a collective annual allocation of Project construction  
586 costs to the contractors exercising contract conversions; Provided, That the reference to the  
587 amount of \$5,000,000 shall not be a precedent in any other context.

588 (2) If the collective annual Project construction costs or  
589 other capitalized costs that are incurred after the effective date of this Contract and properly  
590 assignable to the contractors are \$5,000,000 or greater, then the portion of such costs properly  
591 assignable to the Contractor shall be repaid as provided by applicable Federal Reclamation law.  
592 This amount is the result of a collective annual allocation of Project construction costs to the  
593 contractors exercising contract conversions; Provided, That the reference to the amount of  
594 \$5,000,000 shall not be a precedent in any other context.

595 (b) Consistent with Section 10010(b) of the SJRRSA, following a final cost  
596 allocation by the Secretary upon completion of the construction of the Central Valley Project, the  
597 amounts paid by the Contractor shall be subject to adjustment to reflect the effect of any  
598 reallocation of Project construction costs or other capitalized costs assigned to the Contractor  
599 that may have occurred between the determination of Contractor's Existing Capital Obligation  
600 and the final cost allocation. In the event that the final cost allocation, as determined by the  
601 Secretary, indicates that the costs properly assignable to the Contractor, as determined by the  
602 Contracting Officer, are greater than the Existing Capital Obligation and other amounts of  
603 Project construction costs or other capitalized costs paid by the Contractor, then the Contractor  
604 shall be obligated to pay the remaining allocated costs. The term of such additional repayment  
605 contract shall be no less than one (1) year and no more than ten (10) years, however, mutually

606 agreeable provisions regarding the rate of repayment of such amount may be developed by the  
607 parties. In the event that the final cost allocation, as determined by the Secretary, indicates that  
608 the costs properly assignable to the Contractor, as determined by the Contracting Officer, are less  
609 than the Existing Capital Obligation and other amounts of Project construction costs or other  
610 capitalized costs paid by the Contractor, then the Contracting Officer shall credit such  
611 overpayment as an offset against any outstanding or future obligation of the Contractor,  
612 consistent with the SJRRSA. This Contract shall be implemented in a manner consistent with  
613 Section 10010(f) of the SJRRSA.

614 (c) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
615 provide the Contractor an estimate of the Charges for Project Water that will be applied to the  
616 period October 1, of the current Calendar Year, through September 30, of the following Calendar  
617 Year, and the basis for such estimate. The Contractor shall be allowed not less than two (2)  
618 months to review and comment on such estimates. On or before September 15 of each Calendar  
619 Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect  
620 during the period October 1 of the current Calendar Year, through September 30 of the following  
621 Calendar Year, and such notification shall revise Exhibit "B". Charges shall be subject to  
622 reduction consistent with the SJRRSA based upon the average annual delivery amount agreed to  
623 by the Contracting Officer and the Contractor.

624 (1) Upon complete payment of the Repayment Obligation by the  
625 Contractor, and notwithstanding any Additional Capital Obligation that may later be established,  
626 for the years 2020 through 2039 inclusive, Charges shall reflect the reduction on a per acre-foot

627 basis consistent with Section 10010(d)(1) of the SJRRSA. Exhibit "D" sets forth the reduction in  
628 Charges to offset the Financing Costs as prescribed in Section 10010(d)(1) of the SJRRSA;  
629 Provided, That if the Secretary determines such Charges are otherwise needed, an equivalent  
630 reduction will be made to O&M costs consistent with such provisions of the SJRRSA.  
631 Consistent with Section 10010(d)(1) of the SJRRSA and as shown in Exhibit "D", the Friant  
632 Surcharge reduction has been calculated based upon the anticipated average annual water  
633 deliveries, for the purpose of this reduction only, mutually agreed upon by the Secretary and the  
634 Contractor for the period from January 1, 2020 through December 31, 2039. The Friant  
635 Surcharge reduction shall remain fixed and shall only be applied to Water Delivered pursuant to  
636 this Contract to which the Friant Surcharge applies (including but not limited to water  
637 transferred, banked, or exchanged), commencing on January 1, 2020 until such volume of Water  
638 Delivered equals 41,120 acre-feet or December 31, 2039, whichever occurs first.

639 (2) Further, to fully offset the Financing Costs, Contractor shall be  
640 entitled to a reduction in other outstanding or future obligations of the Contractor in accordance  
641 with Section 10010(d)(2) of the SJRRSA. The amount of such further reduction in outstanding  
642 or future obligations of the Contractor after October 1, 2019 has been computed by the  
643 Contracting Officer, and as computed, such amount is set forth in Exhibit "D".

644 (d) Prior to October 1 of each Calendar Year, the Contracting Officer shall  
645 make available to the Contractor an estimate of the Rates for Project Water for the following  
646 Year and the computations and cost allocations upon which those Rates are based. The  
647 Contractor shall be allowed not less than two (2) months to review and comment on such

648 computations and cost allocations. By December 31 of each Calendar Year, the Contracting  
649 Officer shall provide the Contractor with the final Rates to be in effect for the upcoming Year,  
650 and such notification shall revise Exhibit "B". The O&M component of the Rate may be  
651 reduced as provided in the SJRRSA.

652 (e) At the time the Contractor submits the initial schedule for the delivery of  
653 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the  
654 Contractor shall make an advance payment to the United States equal to the total amount payable  
655 pursuant to the applicable Rate(s) set under subdivision (a) of this Article of this Contract, for the  
656 Project Water scheduled to be delivered pursuant to this Contract during the first two (2)  
657 calendar months of the Year. Before the end of the first month and before the end of each  
658 calendar month thereafter, the Contractor shall make an advance payment to the United States, at  
659 the Rate(s) set under subdivision (a) of this Article of this Contract, for the Water Scheduled to  
660 be delivered pursuant to this Contract during the second month immediately following.

661 Adjustments between advance payments for Water Scheduled and payments at Rates due for  
662 Water Delivered shall be made before the end of the following month; Provided, That any  
663 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which  
664 increases the amount of Water Delivered pursuant to this Contract during any month shall be  
665 accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project  
666 Water is not delivered to the Contractor in advance of such payment. In any month in which the  
667 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of  
668 Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered

669 to the Contractor unless and until an advance payment at the Rates then in effect for such  
670 additional Project Water is made. Final adjustment between the advance payments for the Water  
671 Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this  
672 Contract shall be made as soon as practicable but no later than April 30th of the following Year,  
673 or sixty (60) days after the delivery of Project Water carried over under subdivision (g) of Article  
674 3 of this Contract if such water is not delivered by the last day of February.

675 (f) The Contractor shall also make a payment in addition to the Rate(s) in  
676 subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the  
677 Charges then in effect, before the end of the month following the month of delivery. The  
678 payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as  
679 shown in the water delivery report for the subject month prepared by the Contracting Officer.  
680 Such water delivery report shall be the basis for payment of Charges by the Contractor, and shall  
681 be provided to the Contractor by the Contracting Officer (as applicable) within five (5) days after  
682 the end of the month of delivery. The water delivery report shall be deemed a bill basis for  
683 payment of Charges for Water Delivered. Adjustment for overpayment or underpayment of  
684 Charges shall be made through the adjustment of payments due to the United States for Charges  
685 for the next month. Any amount to be paid for past due payment of Charges shall be computed  
686 pursuant to Article 21 of this Contract.

687 (g) The Contractor shall pay for any Water Delivered under subdivision (d),  
688 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to  
689 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting

690 policies; Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this  
691 Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water  
692 under subdivision (a) of this Article of this Contract.

693 (h) Payments to be made by the Contractor to the United States under this  
694 Contract may be paid from any revenues available to the Contractor.

695 (i) All revenues received by the United States from the Contractor relating to  
696 the delivery of Project Water or the delivery of non-project water through Project facilities shall  
697 be allocated and applied in accordance with Federal Reclamation law and the associated rules or  
698 regulations, the then-existing Project Ratesetting policies for M&I Water or Irrigation Water, and  
699 consistent with the SJRRSA.

700 (j) The Contracting Officer shall keep its accounts, pertaining to the  
701 administration of the financial terms and conditions of its long-term contracts, in accordance  
702 with applicable Federal standards so as to reflect the application of Project costs and revenues.

703 The Contracting Officer shall, each Year upon request of the Contractor, provide to the  
704 Contractor a detailed accounting of all Project and Contractor expense allocations, the  
705 disposition of all Project and Contractor revenues, and a summary of all water delivery  
706 information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
707 to resolve any discrepancies or disputes relating to accountings, reports, or information.

708 (k) The parties acknowledge and agree that the efficient administration of this  
709 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
710 policies, and procedures used for establishing Rates, Charges, and/or for making and allocating

711 payments, other than those set forth in this Article of this Contract, may be in the mutual best  
712 interest of the parties, it is expressly agreed that the parties may enter into agreements to modify  
713 the mechanisms, policies, and procedures for any of those purposes while this Contract is in  
714 effect without amending this Contract.

715 (l) (1) Omitted.

716 (2) Omitted.

717 (3) Omitted.

718 (m) Rates under the respective ratesetting policies will be established to  
719 recover only reimbursable O&M (including any deficits) costs of the Project, as those terms are  
720 used in the then-existing Project ratesetting policies, and consistent with the SJRRSA, and  
721 interest, where appropriate, except in instances where a minimum Rate is applicable in  
722 accordance with the relevant Project ratesetting policy. Changes of significance in practices  
723 which implement the Contracting Officer's ratesetting policies will not be implemented until the  
724 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and  
725 impact of the proposed change.

726 (n) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
727 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates  
728 adjusted upward or downward to reflect the changed costs of delivery (if any) incurred by the  
729 Contracting Officer in the delivery of the transferred Project Water to the transferee's point of  
730 delivery in accordance with the then-existing Central Valley Project Ratesetting Policy.

**NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS**

8. The Contractor and the Contracting Officer concur that, as of the effective date of this Contract, the Contractor has no non-interest bearing operation and maintenance deficits and therefore shall have no further liability.

**RECOVERED WATER ACCOUNT**

9. (a) Notwithstanding any other provisions of this Contract, water delivered to the Contractor under its Recovered Water Account as provided at Paragraph 16(b) of the Settlement and affirmed by Section 10004(a)(5) of the SJRRSA shall be at the total cost of \$10.00 per acre foot. Recovered Water Account water provided to the Contractor shall be administered at a priority for delivery lower than Class 2 Water and higher than Section 215 Water.

(b) The manner in which the Recovered Water Account will be administered will be developed in accordance with subdivision (k) of Article 7 of this Contract, the SJRRSA, and Paragraph 16 of the Settlement.

**SALES, TRANSFERS, AND EXCHANGES OF WATER**

10. (a) The right to receive Project Water provided for in this Contract may be sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take place without the prior written approval of the Contracting Officer, except as provided for in subdivisions (b) and (c) of this Article of this Contract. No

752 such Project Water sales, transfers, or exchanges shall be approved, where approval is required,  
753 absent compliance with appropriate environmental documentation including but not limited to  
754 the National Environmental Policy Act and the Endangered Species Act. Such environmental  
755 documentation must include, as appropriate, an analysis of groundwater impacts and economic  
756 and social effects, including environmental justice, of the proposed Project Water sales, transfers  
757 and exchanges on both the transferor/exchanger and transferee/exchange recipient.

758           (b) In order to facilitate efficient water management by means of Project  
759 Water sales, transfers, or exchanges of the type historically carried out among Project  
760 Contractors located within the same geographical area and to allow the Contractor to participate  
761 in an accelerated water transfer program, the Contracting Officer has prepared, as appropriate,  
762 necessary environmental documentation including, but not limited to, the National  
763 Environmental Policy Act and the Endangered Species Act analyzing annual Project Water sales,  
764 transfers, or exchanges among Contractors within the same geographical area and the  
765 Contracting Officer has determined that such Project Water sales, transfers, and exchanges  
766 comply with applicable law.

767           (c) Project Water sales, transfers, and exchanges analyzed in the  
768 environmental documentation referenced in subdivision (b) of this Article of this Contract, shall  
769 be conducted with advance notice to the Contracting Officer and the Contracting Officer's  
770 written acknowledgement of the transaction, but shall not require prior written approval by the  
771 Contracting Officer.

772 (d) For Project Water sales, transfers, or exchanges to qualify under  
773 subdivision (b) of this Article of this Contract such Project Water sale, transfer, or exchange  
774 must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for  
775 M&I use, groundwater recharge, groundwater banking, similar groundwater activities, surface  
776 water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to  
777 established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur within a single  
778 Year; (iii) occur between a willing seller and a willing buyer or willing exchangers; (iv) convey  
779 water through existing facilities with no new construction or modifications to facilities and be  
780 between existing Project Contractors and/or the Contractor and the United States, Department of  
781 the Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and  
782 requirements imposed for protection of the environment and Indian Trust Assets, as defined  
783 under Federal law.

784 (e) The environmental documentation and the Contracting Officer's  
785 compliance determination for transactions described in subdivision (b) of this Article of this  
786 Contract shall be reviewed every five (5) years and updated, as necessary, prior to the expiration  
787 of the then-existing five (5) year period. All subsequent environmental documentation shall  
788 include an alternative to evaluate not less than the quantity of Project Water historically sold,  
789 transferred, or exchanged within the same geographical area.

790 (f) Consistent with Section 10010(e)(l) of the SJRRSA, any agreement  
791 providing for sale, transfer, or exchange of Project Water that is not used for interim flows or  
792 restoration flows pursuant to Paragraphs 13 and 15 of the Settlement, shall be deemed to satisfy

793 the requirements of CVPIA section 3405(a)(1)(A) and (I); Provided, That such sales, transfers, or  
794 exchanges comply with sub-division (f)(1) and (f)(2) below.

795 (1) Project Water sales, transfers, and exchanges conducted under the  
796 provisions of subdivision (f) of this Article of this Contract shall not require the Contracting  
797 Officer's concurrence as to compliance with CVPIA 3405(a)(1)(A) and (I); Provided, That the  
798 Contractor shall, for Project Water sales, transfers, or exchanges, with a term greater than one (1)  
799 year, provide ninety (90) days written advance notification to the Contracting Officer and  
800 similarly thirty (30) days written advance notification of any Project Water sale, transfer, or  
801 exchange with a term of less than one (1) year. The Contracting Officer shall promptly make  
802 such notice publicly available.

803 (2) The Contractor's thirty (30) days or ninety (90) days advance  
804 written notification pursuant to subdivision (f)(1) of this Article of this Contract shall explain  
805 how the proposed Project Water sales, transfers, or exchanges are intended to reduce, avoid, or  
806 mitigate impacts to Project Water deliveries caused by interim or restoration flows or is  
807 otherwise intended to facilitate the Water Management Goal as described in the SJRRSA. The  
808 Contracting Officer shall promptly make such notice publicly available.

809 (3) In addition, the Contracting Officer shall, at least annually, make  
810 available publicly a compilation of the number of Project Water sales, transfers, and exchange  
811 agreements implemented in accordance with sub-divisions (f)(1) and (f)(2) of this Article of this  
812 Contract.

813                               (4)     Project Water sold, transferred, or exchanged under an agreement  
814     that meets the terms of subdivisions (f)(1) and (f)(2) of this Article of this Contract shall not be  
815     counted as a replacement or an offset for purposes of determining reductions to Project Water  
816     deliveries to any Friant Division Project Contractor except as provided in Paragraph 16(b) of the  
817     Settlement.

818                               (g)     Notwithstanding any Additional Capital Obligation that may later be  
819     established, in the case of a sale or transfer of Irrigation Water to another contractor which is  
820     otherwise subject to the acreage limitations, reporting, Full Cost pricing provisions of the  
821     Reclamation Reform Act of 1982, as amended, hereinafter referred to as the RRA, such sold or  
822     transferred Irrigation Water shall not be subject to such RRA provisions, however, in the case of  
823     a sale or transfer of Irrigation Water to the Contractor from another contractor which is subject to  
824     RRA provisions, such RRA provisions shall apply to delivery of such water.

825                               APPLICATION OF PAYMENTS AND ADJUSTMENTS

826               11.     (a)     The amount of any overpayment by the Contractor of the Contractor's  
827     O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current  
828     liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of  
829     more than One Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu  
830     of a refund, any amount of such overpayment, at the option of the Contractor, may be credited  
831     against amounts to become due to the United States by the Contractor. With respect to  
832     overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or  
833     anyone having or claiming to have the right to the use of any of the Project Water supply

834 provided for herein. All credits and refunds of overpayments shall be made within thirty (30)  
835 days of the Contracting Officer obtaining direction as to how to credit or refund such  
836 overpayment in response to the notice to the Contractor that it has finalized the accounts for the  
837 Year in which the overpayment was made.

838 (b) All advances for miscellaneous costs incurred for work requested by the  
839 Contractor pursuant to Article 26 of this Contract shall be adjusted to reflect the actual costs  
840 when the work has been completed. If the advances exceed the actual costs incurred, the  
841 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's  
842 advances, the Contractor will be billed for the additional costs pursuant to Article 26 of this  
843 Contract.

844 TEMPORARY REDUCTIONS—RETURN FLOWS

845 12. (a) The Contracting Officer shall make all reasonable efforts to optimize  
846 delivery of the Contract Total subject to: (i) the authorized purposes and priorities of the Project;  
847 (ii) the requirements of Federal law and the Settlement; and (iii) the obligations of the United  
848 States under existing contracts, or renewals thereof, providing for water deliveries from the  
849 Project.

850 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily  
851 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for  
852 the purposes of investigation, inspection, maintenance, repair, or replacement of any of the  
853 Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor,  
854 but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the

855 Contractor due notice in advance of such temporary discontinuance or reduction, except in case  
856 of emergency, in which case no notice need be given; Provided, That the United States shall use  
857 its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of  
858 service after such reduction or discontinuance, and if requested by the Contractor, the United  
859 States will, if possible, deliver the quantity of Project Water which would have been delivered  
860 hereunder in the absence of such discontinuance or reduction.

861 (c) The United States reserves the right to all seepage and return flow water  
862 derived from Water Delivered to the Contractor hereunder which escapes or is discharged  
863 beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for  
864 the United States any right as seepage or return flow to water being used pursuant to this  
865 Contract for surface irrigation or underground storage either being put to reasonable and  
866 beneficial use pursuant to this Contract within the Contractor's Service Area by the Contractor or  
867 those claiming by, through, or under the Contractor. For purposes of this subdivision,  
868 groundwater recharge, groundwater banking and all similar groundwater activities will be  
869 deemed to be underground storage.

870 CONSTRAINTS ON THE AVAILABILITY OF WATER

871 13. (a) In its operation of the Project, the Contracting Officer will use all  
872 reasonable means to guard against a Condition of Shortage in the quantity of water to be made  
873 available to the Contractor pursuant to this Contract. In the event the Contracting Officer  
874 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the  
875 Contractor of said determination as soon as practicable.

876 (b) If there is a Condition of Shortage because of errors in physical operations  
877 of the Project, drought, other physical causes beyond the control of the Contracting Officer or  
878 actions taken by the Contracting Officer to meet legal obligations, including but not limited to  
879 obligations pursuant to the Settlement then, except as provided in subdivision (a) of Article 19 of  
880 this Contract, no liability shall accrue against the United States or any of its officers, agents, or  
881 employees for any damage, direct or indirect, arising therefrom.

882 (c) The United States shall not execute contracts which together with this  
883 Contract, shall in the aggregate provide for furnishing Class 1 Water in excess of 800,000  
884 acre-feet per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year; Provided, That,  
885 subject to subdivision (l) of Article 3 of this Contract, the limitation placed on Class 2 Water  
886 contracts shall not prohibit the United States from entering into temporary contracts of one year  
887 or less in duration for delivery of Project Water to other entities if such water is not necessary to  
888 meet the schedules as may be submitted by all Friant Division Project Contractors entitled to  
889 receive Class 1 Water and/or Class 2 Water under their contracts. Nothing in this subdivision  
890 shall limit the Contracting Officer's ability to take actions that result in the availability of new  
891 water supplies to be used for Project purposes and allocating such new supplies; Provided, That  
892 the Contracting Officer shall not take such actions until after consultation with the Friant  
893 Division Project Contractors.

894 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to  
895 this or any other contract heretofore or hereafter entered into any Year unless and until the  
896 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in

897 subdivision (c) of this Article of this Contract will be available for delivery in said Year. If the  
898 Contracting Officer determines there is or will be a shortage in any Year in the quantity of  
899 Class 1 Water available for delivery, the Contracting Officer shall apportion the available Class 1  
900 Water among all Contractors entitled to receive such water that will be made available at Friant  
901 Dam in accordance with the following:

902                   (1)     A determination shall be made of the total quantity of Class 1  
903 Water at Friant Dam which is available for meeting Class 1 Water contractual commitments, the  
904 amount so determined being herein referred to as the available supply.

905                   (2)     The total available Class 1 supply shall be divided by the Class 1  
906 Water contractual commitments, the quotient thus obtained being herein referred to as the  
907 Class 1 apportionment coefficient.

908                   (3)     The total quantity of Class 1 Water under Article 3 of this Contract  
909 shall be multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of  
910 Class 1 Water required to be delivered by the Contracting Officer to the Contractor for the  
911 respective Year, but in no event shall such amount exceed the total quantity of Class 1 Water  
912 specified in subdivision (a) of Article 3 of this Contract.

913                   (e)     If the Contracting Officer determines there is less than the quantity of  
914 Class 2 Water which the Contractor otherwise would be entitled to receive pursuant to Article 3  
915 of this Contract, the quantity of Class 2 Water which shall be furnished to the Contractor by the  
916 Contracting Officer will be determined in the manner set forth in paragraphs (1), (2), and (3), of

917 subdivision (d) of this Article of this Contract substituting the term “Class 2” for the term “Class  
918 1.”

919 (f) In the event that in any Year there is made available to the Contractor, by  
920 reason of any shortage or apportionment as provided in subdivisions (a), (d), or (e) of this Article  
921 of this Contract, or any discontinuance or reduction of service as set forth in subdivision (b) of  
922 Article 12 of this Contract, less than the quantity of water which the Contractor otherwise would  
923 be entitled to receive hereunder, there shall be made an adjustment on account of the amounts  
924 already paid to the Contracting Officer by the Contractor for Class 1 Water and Class 2 Water  
925 for said Year in accordance with Article 11 of this Contract.

926 UNAVOIDABLE GROUNDWATER PERCOLATION

927 14. Omitted.

928 ACREAGE LIMITATION

929 15. (a) The Contractor has paid the Repayment Obligation, and notwithstanding  
930 any Additional Capital Obligation that may later be established, the provisions of section 213(a)  
931 and (b) of the RRA shall apply to lands in the Contractor’s Service Area, with the effect that  
932 acreage limitations, reporting, and Full Cost pricing provisions of the RRA shall no longer apply  
933 to lands in the Contractor’s Service Area with respect to Water Delivered pursuant to this  
934 Contract. Reclamation will conduct a final water district review for the purpose of determining  
935 compliance with the acreage limitations, reporting, and Full Cost pricing provisions of the RRA  
936 from the date of the last water district review until the date when payment to Reclamation of the  
937 Repayment Obligation was completed.

938                   (b)     Project Water to which the Contractor is entitled through a separate  
939 contract, other than this Contract, that is subject to Federal Reclamation law, may be delivered to  
940 lands within the Contractor's Service Area. Notwithstanding any Additional Capital Obligation  
941 that may later be established, Project Water Delivered under this Contract may be mixed with  
942 Project Water Delivered pursuant to a contract with the United States, other than this Contract, to  
943 which acreage limitations, reporting, and the Full Cost pricing provisions of Federal Reclamation  
944 law apply without causing the application of the acreage limitations, reporting, and the Full Cost  
945 pricing provisions of Federal Reclamation law to the Water Delivered pursuant to this Contract;  
946 Provided, The terms and conditions in such other contract shall continue to apply, and if such  
947 terms and conditions so require, the lands to receive Project Water under such other contract  
948 shall be properly designated by the Contractor and such Project Water is to be delivered in  
949 accordance with the RRA including any applicable acreage limitations, reporting, and Full Cost  
950 pricing provisions.

951                   COMPLIANCE WITH FEDERAL RECLAMATION LAWS

952                   16.   (a)     The parties agree that the delivery of water or the use of Federal facilities  
953 pursuant to this Contract is subject to Federal Reclamation law, as amended and supplemented,  
954 and the rules and regulations promulgated by the Secretary of the Interior under Federal  
955 Reclamation law.

956                   (b)     The terms of this Contract are subject to the Settlement and the SJRRSA.  
957 Nothing in this Contract shall be interpreted to limit or interfere with the full implementation of  
958 the Settlement and the SJRRSA.

959

PROTECTION OF WATER AND AIR QUALITY

960           17.   (a)   Project facilities used to make available and deliver water to the  
961 Contractor shall be operated and maintained in the most practical manner to maintain the quality  
962 of the water at the highest level possible as determined by the Contracting Officer: *Provided,*  
963 *That* the United States does not warrant the quality of the water delivered to the Contractor and is  
964 under no obligation to furnish or construct water treatment facilities to maintain or improve the  
965 quality of water delivered to the Contractor.

966                   (b)   The Contractor shall comply with all applicable water and air pollution  
967 laws and regulations of the United States and the State of California; and shall obtain all required  
968 permits or licenses from the appropriate Federal, State, or local authorities necessary for the  
969 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,  
970 State, and local water quality standards applicable to surface and subsurface drainage and/or  
971 discharges generated through the use of Federal or Contractor facilities or project water provided  
972 by the Contractor within the Contractor's Project Water Service Area.

973                   (c)   This article shall not affect or alter any legal obligations of the Secretary  
974 to provide drainage or other discharge services.

975                                   WATER ACQUIRED BY THE CONTRACTOR  
976                                   OTHER THAN FROM THE UNITED STATES

977           18.   (a)   Omitted.

978                   (b)   Notwithstanding any Additional Capital Obligation that may later be  
979 established, water or water rights now owned or hereafter acquired by the Contractor other than  
980 from the United States pursuant to this Contract and Irrigation Water furnished pursuant to the  
981 terms of this Contract may be simultaneously transported through the same distribution facilities  
982 of the Contractor without the payment of fees to the United States and without application of  
983 Federal Reclamation law to Water Delivered pursuant to this Contract or to lands which receive  
984 Water Delivered to Contractor pursuant to this Contract.

985                   (c)   Water or water rights now owned or hereafter acquired by the Contractor,  
986 other than from the United States or adverse to the Project or its contractors (i.e., non-project

987 water), may be stored, conveyed and/or diverted through Project facilities, other than Friant  
988 Division Facilities, subject to the completion of appropriate environmental documentation, with  
989 the approval of the Contracting Officer and the execution of any contract determined by the  
990 Contracting Officer to be necessary, consistent with the following provisions:

991 (1) The Contractor may introduce non-project water into Project  
992 facilities and deliver said water to lands within the Contractor's Service Area subject to payment  
993 to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate  
994 as determined by the Contracting Officer. In addition, if electrical power is required to pump  
995 non-project water, the Contractor shall be responsible for obtaining the necessary power and  
996 paying the necessary charges therefor.

997 (2) Delivery of such non-project water in and through Project facilities  
998 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project  
999 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water  
1000 available to other Project Contractors; (iii) interfere with the delivery of contractual water  
1001 entitlements to any other Project Contractors; (iv) interfere with the physical maintenance of the  
1002 Project facilities; or (v) result in the United States incurring any liability or unreimbursed costs  
1003 or expenses thereby.

1004 (3) Neither the United States nor the Operating Non-Federal Entity  
1005 shall be responsible for control, care or distribution of the non-project water before it is  
1006 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases  
1007 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and

1008 their respective officers, agents, and employees, from any claim for damage to persons or  
1009 property, direct or indirect, resulting from Contractor's diversion or extraction of non-project  
1010 water from any source.

1011 (4) Diversion of such non-project water into Project facilities shall be  
1012 consistent with all applicable laws, and if involving groundwater, consistent with any  
1013 groundwater management plan for the area from which it was extracted.

1014 (5) After Project purposes are met, as determined by the Contracting  
1015 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity  
1016 of the facilities declared to be available by the Contracting Officer for conveyance and  
1017 transportation of non-project water prior to any such remaining capacity being made available to  
1018 non-project contractors.

1019 (d) Non-project water may be stored, conveyed and/or diverted through Friant  
1020 Division Facilities, subject to the prior completion of appropriate environmental documentation  
1021 and approval of the Contracting Officer without execution of a separate contract, consistent with  
1022 subdivisions (c)(1) through (c)(5) of this Article and any other condition determined to be  
1023 appropriate by the Contracting Officer.

1024 OPINIONS AND DETERMINATIONS

1025 19. (a) Where the terms of this Contract provide for actions to be based upon the  
1026 opinion or determination of either party to this Contract, said terms shall not be construed as  
1027 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
1028 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly

1029 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,  
1030 or unreasonable opinion or determination. Each opinion or determination by either party shall be  
1031 provided in a timely manner. Nothing in this Article of this Contract is intended to or shall affect  
1032 or alter the standard of judicial review applicable under Federal law to any opinion or  
1033 determination implementing a specific provision of Federal law embodied in statute or  
1034 regulation.

1035 (b) The Contracting Officer shall have the right to make determinations  
1036 necessary to administer this Contract that are consistent with the provisions of this Contract, the  
1037 laws of the United States and the State of California, and the rules and regulations promulgated  
1038 by the Secretary. Such determinations shall be made in consultation with the Contractor to the  
1039 extent reasonably practicable.

1040 COORDINATION AND COOPERATION

1041 20. (a) In order to further their mutual goals and objectives, the Contracting  
1042 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and  
1043 with other affected Project Contractors, in order to improve the operation and management of the  
1044 Project. The communication, coordination, and cooperation regarding operations and  
1045 management shall include, but not limited to, any action which will or may materially affect the  
1046 quantity or quality of Project Water supply, the allocation of Project Water supply, and Project  
1047 financial matters including, but not limited to, budget issues. The communication, coordination,  
1048 and cooperation provided for hereunder shall extend to all provisions of this Contract. Each

1049 party shall retain exclusive decision making authority for all actions, opinions, and  
1050 determinations to be made by the respective party.

1051 (b) It is the intent of the Secretary to improve water supply reliability. To  
1052 carry out this intent:

1053 (1) The Contracting Officer will, at the request of the Contractor,  
1054 assist in the development of integrated resource management plans for the Contractor. Further,  
1055 the Contracting Officer will, as appropriate, seek authorizations for implementation of  
1056 partnerships to improve water supply, water quality, and reliability.

1057 (2) The Secretary will, as appropriate, pursue program and project  
1058 implementation and authorization in coordination with Project Contractors to improve the water  
1059 supply, water quality, and reliability of the Project for all Project purposes.

1060 (3) The Secretary will coordinate with Project Contractors and the  
1061 State of California to seek improved water resource management.

1062 (4) The Secretary will coordinate actions of agencies within the  
1063 Department of the Interior that may impact the availability of water for Project purposes.

1064 (5) The Contracting Officer shall periodically, but not less than  
1065 annually, hold division level meetings to discuss Project operations, division level water  
1066 management activities, and other issues as appropriate.

1067 (c) Without limiting the contractual obligations of the Contracting Officer  
1068 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting  
1069 Officer's ability to communicate, coordinate, and cooperate with the Contractor or other

1070 interested stakeholders or to make decisions in a timely fashion as needed to protect health,  
1071 safety, physical integrity of structures or facilities, or the Contracting Officer's ability to comply  
1072 with applicable laws.

1073 CHARGES FOR DELINQUENT PAYMENTS

1074 21. (a) The Contractor shall be subject to interest, administrative and penalty  
1075 charges on delinquent installments or payments. When a payment is not received by the due  
1076 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond  
1077 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an  
1078 administrative charge to cover additional costs of billing and processing the delinquent payment.  
1079 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional  
1080 penalty charge of six (6) percent per year for each day the payment is delinquent beyond the due  
1081 date. Further, the Contractor shall pay any fees incurred for debt collection services associated  
1082 with a delinquent payment.

1083 (b) The interest charge rate shall be the greater of the rate prescribed quarterly  
1084 in the Federal Register by the Department of the Treasury for application to overdue payments,  
1085 or the interest rate of one-half of one (0.5) percent per month prescribed by Section 6 of the  
1086 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be  
1087 determined as of the due date and remain fixed for the duration of the delinquent period.

1088 (c) When a partial payment on a delinquent account is received, the amount  
1089 received shall be applied, first to the penalty, second to the administrative charges, third to the  
1090 accrued interest, and finally to the overdue payment.

1091 EQUAL EMPLOYMENT OPPORTUNITY

1092 22. During the performance of this Contract, the Contractor agrees as follows:

1093 (a) The Contractor will not discriminate against any employee or applicant for  
1094 employment because of race, color, religion, sex, disability, or national origin. The Contractor  
1095 will take affirmative action to ensure that applicants are employed, and that employees are  
1096 treated during employment, without regard to their race, color, religion, sex, disability, or  
1097 national origin. Such action shall include, but not be limited to the following: employment,  
1098 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination;  
1099 rates of pay or other forms of compensation; and selection for training, including apprenticeship.  
1100 The Contractor agrees to post in conspicuous places, available to employees and applicants for

1101 employment, notices to be provided by the Contracting Officer setting forth the provisions of this  
1102 nondiscrimination clause.

1103 (b) The Contractor will, in all solicitations or advertisements for employees  
1104 placed by or on behalf of the Contractor, state that all qualified applicants will receive  
1105 consideration for employment without regard to race, color, religion, sex, disability, or national  
1106 origin.

1107 (c) The Contractor will send to each labor union or representative of workers  
1108 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
1109 to be provided by the Contracting Officer, advising the labor union or workers' representative of  
1110 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24,  
1111 1965, and shall post copies of the notice in conspicuous places available to employees and  
1112 applicants for employment.

1113 (d) The Contractor will comply with all provisions of Executive Order No.  
1114 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary  
1115 of Labor.

1116 (e) The Contractor will furnish all information and reports required by  
1117 Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the  
1118 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and  
1119 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to  
1120 ascertain compliance with such rules, regulations, and orders.

1121 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
1122 clauses of this contract or with any of such rules, regulations, or orders, this contract may be  
1123 canceled, terminated or suspended in whole or in part and the Contractor may be declared  
1124 ineligible for further Government contracts in accordance with procedures authorized in  
1125 Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and  
1126 remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule,  
1127 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1128 (g) The Contractor will include the provisions of paragraphs (1) through (7) in  
1129 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
1130 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24,  
1131 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor  
1132 will take such action with respect to any subcontract or purchase order as may be directed by the  
1133 Secretary of Labor as a means of enforcing such provisions, including sanctions for  
1134 noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is  
1135 threatened with, litigation with a subcontractor or vendor as a result of such direction, the

1136 Contractor may request the United States to enter into such litigation to protect the interests of  
1137 the United States.

1138 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

1139 23. (a) The obligation of the Contractor to pay the United States as provided in  
1140 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
1141 obligation may be distributed among the Contractor's water users and notwithstanding the  
1142 default of individual water users in their obligations to the Contractor.

1143 (b) The payment of charges becoming due hereunder is a condition precedent  
1144 to receiving benefits under this Contract. The United States shall not make water available to the  
1145 Contractor through Project facilities during any period in which the Contractor may be in arrears  
1146 in the advance payment of water rates due the United States. The Contractor shall not furnish  
1147 water made available pursuant to this Contract for lands or parties which are in arrears in the  
1148 advance payment of water rates levied or established by the Contractor.

1149 (c) With respect to subdivision (b) of this Article of this Contract, the  
1150 Contractor shall have no obligation to require advance payment for water rates which it levies.

1151 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1152 24. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
1153 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
1154 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights  
1155 laws, as well as with their respective implementing regulations and guidelines imposed by the  
1156 U.S. Department of the Interior and/or Bureau of Reclamation.

1157 (b) These statutes require that no person in the United States shall, on the  
1158 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be  
1159 denied the benefits of, or be otherwise subjected to discrimination under any program or activity  
1160 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the  
1161 Contractor agrees to immediately take any measures necessary to implement this obligation,  
1162 including permitting officials of the United States to inspect premises, programs, and documents.

1163 (c) The Contractor makes this agreement in consideration of and for the  
1164 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
1165 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of  
1166 Reclamation, including installment payments after such date on account of arrangements for  
1167 Federal financial assistance which were approved before such date. The Contractor recognizes

1168 and agrees that such Federal assistance will be extended in reliance on the representations and  
1169 agreements made in this Article, and that the United States reserves the right to seek judicial  
1170 enforcement thereof.

1171 PRIVACY ACT COMPLIANCE

1172 25. Omitted.

1173 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1174 26. In addition to all other payments to be made by the Contractor pursuant to this  
1175 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a  
1176 bill and detailed statement submitted by the Contracting Officer to the Contractor for such  
1177 specific items of direct cost incurred by the United States for work requested by the Contractor  
1178 associated with this Contract plus indirect costs in accordance with applicable Bureau of  
1179 Reclamation policies and procedures. All such amounts referred to in this Article of this  
1180 Contract shall not exceed the amount agreed to in writing in advance by the Contractor. This  
1181 Article of this Contract shall not apply to costs for routine contract administration.

1182 WATER CONSERVATION

1183 27. (a) Prior to the delivery of water provided from or conveyed through  
1184 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor  
1185 shall be implementing an effective water conservation and efficiency program based on the  
1186 Contractor's water conservation plan that has been determined by the Contracting Officer to  
1187 meet the conservation and efficiency criteria for evaluating water conservation plans established  
1188 under Federal law. The water conservation and efficiency program shall contain definite water  
1189 conservation objectives, appropriate economically feasible water conservation measures, and

1190 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this  
1191 Contract shall be contingent upon the Contractor's continued implementation of such water  
1192 conservation program. In the event the Contractor's water conservation plan or any revised  
1193 water conservation plan completed pursuant to subdivision (d) of this Article of this Contract  
1194 have not yet been determined by the Contracting Officer to meet such criteria, due to  
1195 circumstances which the Contracting Officer determines are beyond the control of the  
1196 Contractor, water deliveries shall be made under this Contract so long as the Contractor  
1197 diligently works with the Contracting Officer to obtain such determination at the earliest  
1198 practicable date, and thereafter the Contractor immediately begins implementing its water  
1199 conservation and efficiency program in accordance with the time schedules therein.

1200 (b) Should the amount of M&I Water Delivered pursuant to subdivision (a) of  
1201 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the  
1202 Contractor shall implement the Best Management Practices identified by the time frames issued  
1203 by the California Urban Water Conservation Council for such M&I Water unless any such  
1204 practice is determined by the Contracting Officer to be inappropriate for the Contractor.

1205 (c) The Contractor shall submit to the Contracting Officer a report on the  
1206 status of its implementation of the water conservation plan on the reporting dates specified in the  
1207 then-existing conservation and efficiency criteria established under Federal law.

1208 (d) At five (5) -year intervals, the Contractor shall revise its water  
1209 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating  
1210 water conservation plans established under Federal law and submit such revised water

1211 management plan to the Contracting Officer for review and evaluation. The Contracting Officer  
1212 will then determine if the water conservation plan meets Reclamation's then-existing  
1213 conservation and efficiency criteria for evaluating water conservation plans established under  
1214 Federal law.

1215 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1216 shall be described in the Contractor's water conservation plan.

1217 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1218 28. Except as specifically provided in Article 18 of this Contract, the provisions of  
1219 this Contract shall not be applicable to or affect non-project water or water rights now owned or  
1220 hereafter acquired by the Contractor or any user of such water within the Contractor's Service  
1221 Area. Any such water shall not be considered Project Water under this Contract. In addition,  
1222 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or  
1223 any water user within the Contractor's Service Area acquires or has available under any other  
1224 contract pursuant to Federal Reclamation law.

1225 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1226 29. (a) The O&M of a portion of the Project facilities which serve the Contractor,  
1227 and responsibility for funding a portion of the costs of such O&M, have been transferred to the  
1228 Operating Non-Federal Entity by separate agreement between the United States and the  
1229 Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the  
1230 rights or obligations of the Contractor or the United States hereunder.

1231           (b)     The Contracting Officer has previously notified the Contractor in writing  
1232 that the O&M of a portion of the Project facilities which serve the Contractor has been  
1233 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly  
1234 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer  
1235 under the terms and conditions of the separate agreement between the United States and the  
1236 Operating Non-Federal Entity described in subdivision (a) of this Article of this Contract, all  
1237 rates, charges or assessments of any kind, including any assessment for reserve funds, which the  
1238 Operating Non-Federal Entity or such successor determines, sets or establishes for (i) the O&M  
1239 of the portion of the Project facilities operated and maintained by the Operating Non-Federal  
1240 Entity or such successor, or (ii) the Friant Division's share of the operation, maintenance and  
1241 replacement costs for physical works and appurtenances associated with the Tracy Pumping  
1242 Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of the  
1243 O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance  
1244 and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity  
1245 or such successor shall not relieve the Contractor of its obligation to pay directly to the United  
1246 States the Contractor's share of the Project Rates and Charges, except to the extent the Operating  
1247 Non-Federal Entity collects payments on behalf of the United States in accordance with the  
1248 separate agreement identified in subdivision (a) of this Article of this Contract.

1249           (c)     For so long as the O&M of any portion of the Project facilities serving the  
1250 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the  
1251 Contracting Officer shall adjust those components of the Rates for Water Delivered under this

1252 Contract representing the cost associated with the activity being performed by the Operating  
1253 Non-Federal Entity or its successor.

1254 (d) In the event the O&M of the Project facilities operated and maintained by  
1255 the Operating Non-Federal Entity is re-assumed by the United States during the term of this  
1256 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the  
1257 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the  
1258 Contractor for Project Water under this Contract representing the O&M costs of the portion of  
1259 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the  
1260 absence of written notification from the Contracting Officer to the contrary, pay the Rates and  
1261 Charges specified in the revised Exhibit "B" directly to the United States in compliance with  
1262 Article 7 of this Contract.

1263 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1264 30. The expenditure or advance of any money or the performance of any obligation of  
1265 the United States under this Contract shall be contingent upon appropriation or allotment of  
1266 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
1267 obligations under this Contract. No liability shall accrue to the United States in case funds are  
1268 not appropriated or allotted.

1269 BOOKS, RECORDS, AND REPORTS

1270 31. (a) The Contractor shall establish and maintain accounts and other books and  
1271 records pertaining to administration of the terms and conditions of this Contract, including: the  
1272 Contractor's financial transactions, water supply data, and Project land and right-of-way  
1273 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
1274 data; and other matters that the Contracting Officer may require. Reports thereon shall be  
1275 furnished to the Contracting Officer in such form and on such date or dates as the Contracting  
1276 Officer may require. Subject to applicable Federal laws and regulations, each party to this  
1277 Contract shall have the right during office hours to examine and make copies of the other party's  
1278 books and records relating to matters covered by this Contract.

1279 (b) Notwithstanding the provisions of subdivision (a) of this Article of this  
1280 Contract, no books, records, or other information shall be requested from the Contractor by the  
1281 Contracting Officer unless such books, records, or information are reasonably related to the  
1282 administration or performance of this Contract. Any such request shall allow the Contractor a  
1283 reasonable period of time within which to provide the requested books, records, or information.

1284 (c) At such time as the Contractor provides information to the Contracting  
1285 Officer pursuant to subdivision (a) of this Article of this Contract, a copy of such information  
1286 shall be provided to the Operating Non-Federal Entity.

1287 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

1288 32. (a) The provisions of this Contract shall apply to and bind the successors and  
1289 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1290 therein shall be valid until approved in writing by the Contracting Officer.

1291 (b) The assignment of any right or interest in this Contract by either party  
1292 shall not interfere with the rights or obligations of the other party to this Contract absent the  
1293 written concurrence of said other party.

1294 (c) The Contracting Officer shall not unreasonably condition or withhold  
1295 approval of any proposed assignment.

1296 SEVERABILITY

1297 33. In the event that a person or entity who is neither (i) a party to a Project contract,  
1298 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor  
1299 (iii) an association or other form of organization whose primary function is to represent parties to  
1300 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or

1301 enforceability of a provision included in this Contract and said person, entity, association, or  
1302 organization obtains a final court decision holding that such provision is legally invalid or  
1303 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),  
1304 the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of  
1305 such final court decision identify by mutual agreement the provisions in this Contract which  
1306 must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate  
1307 revision(s). The time periods specified above may be extended by mutual agreement of the  
1308 parties. Pending the completion of the actions designated above, to the extent it can do so  
1309 without violating any applicable provisions of law, the United States shall continue to make the  
1310 quantities of Project Water specified in this Contract available to the Contractor pursuant to the  
1311 provisions of this Contract which were not found to be legally invalid or unenforceable in the  
1312 final court decision.

1313 RESOLUTION OF DISPUTES

1314 34. Should any dispute arise concerning any provisions of this Contract, or the  
1315 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to  
1316 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1317 Officer referring any matter to Department of Justice, the party shall provide to the other party  
1318 thirty (30) days written notice of the intent to take such action; Provided, That such notice shall  
1319 not be required where a delay in commencing an action would prejudice the interests of the party  
1320 that intends to file suit. During the thirty (30) day notice period, the Contractor and the  
1321 Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as

1322 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the  
1323 Contractor or the United States may have.

1324 OFFICIALS NOT TO BENEFIT

1325 35. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1326 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1327 manner as other water users or landowners.

1328 CHANGES IN CONTRACTOR'S SERVICE AREA

1329 36. (a) While this Contract is in effect, no change may be made in the  
1330 Contractor's Service Area or boundaries, by inclusion or exclusion of lands, dissolution,  
1331 consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

1332 (b) Within thirty (30) days of receipt of a request for such a change, the  
1333 Contracting Officer will notify the Contractor of any additional information required by the  
1334 Contracting Officer for processing said request, and both parties will meet to establish a mutually  
1335 agreeable schedule for timely completion of the process. Such process will analyze whether the  
1336 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this  
1337 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this  
1338 Contract or to pay for any Federally-constructed facilities for which the Contractor is  
1339 responsible; and (iii) have an impact on any Project Water rights applications, permits, or  
1340 licenses. In addition, the Contracting Officer shall comply with the National Environmental  
1341 Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs  
1342 incurred by the Contracting Officer in this process, and such costs will be paid in accordance  
1343 with Article 26 of this Contract.

1344

FEDERAL LAWS

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37. By entering into this Contract, the Contractor does not waive its rights to contest

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the validity or application in connection with the performance of the terms and conditions of this

1347

Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with

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the terms and conditions of this Contract unless and until relief from application of such Federal

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law or regulation to the implementing provision of the Contract is granted by a court of

1350

competent jurisdiction.

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EMERGENCY RESERVE FUND

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38. The Contractor and Contracting Officer acknowledge that the requirements to

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establish and maintain a minimum reserve fund account to finance extraordinary O&M costs of

1354

Friant Division Facilities is and will continue to be administered under Contract No.

1355

8-07-20-X0356 titled Agreement To Transfer The Operation, Maintenance And Replacement

1356

And Certain Financial And Administrative Activities Related To The Friant-Kern Canal And

1357

Associated Works, dated March 1, 1998 as amended, supplemented, assigned, or renewed.

1358

MEDIUM FOR TRANSMITTING PAYMENT

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39. (a) All payments from the Contractor to the United States under this contract

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shall be by the medium requested by the United States on or before the date payment is due. The

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required method of payment may include checks, wire transfers, or other types of payment

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specified by the United States.

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(b) Upon execution of the contract, the Contractor shall furnish the

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Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose

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for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising

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out of the Contractor's relationship with the United States.

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NOTICES

1368           40. Any notice, demand, or request authorized or required by this Contract shall be  
1369 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
1370 delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno,  
1371 California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered  
1372 to the Board of Directors of Kaweah Delta Water Conservation District, 2975 North Farmersville  
1373 Boulevard, Farmersville, California 93223. The designation of the addressee or the address may  
1374 be changed by notice given in the same manner as provided in this Article of this Contract for  
1375 other notices.

1376

CONFIRMATION OF CONTRACT

1377           41. The Contractor, after the execution of this Contract, shall promptly provide to the  
1378 Contracting Officer a decree of a court of competent jurisdiction of the State of California,  
1379 confirming the execution of this Contract. The Contractor shall furnish the United States a  
1380 certified copy of the final decree, the validation proceedings, and all pertinent supporting records  
1381 of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful,  
1382 valid, and binding on the Contractor.

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CONTRACT DRAFTING CONSIDERATIONS

1384           42. Articles 1 through 15, subdivision (c) of Article 16, Articles 18 through 20,  
1385 subdivision (c) of Article 23, Articles 26 through 29, subdivisions (b) and (c) of Article 31,  
1386 subdivisions (b) and (c) of Article 32, Articles 33 through 34, subdivision (b) of Article 36, and  
1387 Articles 37 through 38 of this Contract have been drafted, negotiated, and reviewed by the  
1388 parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and  
1389 no one party shall be considered to have drafted the stated Articles.

Contract No. I75r-180AD

1390            IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day  
1391    and year first above written.

**RESOLUTION NO. 2010- 04  
OF THE  
BOARD OF DIRECTORS  
OF THE  
KAWEAH DELTA WATER CONSERVATION DISTRICT**

WHEREAS, the United States of America ("United States") has constructed and is operating the Central Valley Project ("Project") in California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of the waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries ("Project Water"); and

WHEREAS, the United States constructed Friant Dam (thereby creating Millerton Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the "Friant Division Facilities" which has and will be used, in part, for the furnishing of Project Water to Kaweah Delta Water Conservation District ("DISTRICT"); and

WHEREAS, the United States and Ivanhoe Irrigation District have, continuously, since September 12, 1950, been party to a contract, as amended and as renewed periodically, providing for water service from the Friant Division Facilities to Ivanhoe Irrigation District ("Ivanhoe's Existing Contract"); and

WHEREAS, on or about February 26, 2010, by a document entitled "AGREEMENT FOR PARTIAL ASSIGNMENT OF IVANHOE IRRIGATION DISTRICT'S WATER SERVICE CONTRACT TO KAWEAH DELTA WATER CONSERVATION DISTRICT," ("District's Existing Contract") a portion of the rights under Ivanhoe's Existing Contract were assigned to the DISTRICT ("Ivanhoe's Existing Contract" and the "District's Existing Contract" are hereinafter collectively referred to as the "Existing Contract"); and

WHEREAS, as a result of litigation entitled “Natural Resources Defense Council, et al. v Kirk Rogers, et al.” No. CIV-S-88-1658LLK/GGH, certain contractors benefiting from Friant Division Facilities entered into a Stipulation of Settlement dated September 13, 2006 (the “Settlement”), which Settlement was subsequently confirmed and implemented through federal legislation found in Title X, Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), known as the “San Joaquin River Restoration Settlement Act” and hereinafter referred to as “SJRRSA”; and

WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the Existing Contract to a repayment contract under subsection (d) of Section 9 of the Act of August 4, 1939, no later than December 31, 2010, under mutually agreeable terms and conditions; and

WHEREAS, the DISTRICT and United States have concluded negotiations on all substantive terms and conditions of a repayment contract entitled “CONTRACT BETWEEN THE UNITED STATES AND KAWEAH DELTA WATER CONSERVATION DISTRICT PROVIDING FOR PROJECT WATER SERVICE AND FOR FACILITIES REPAYMENT,” a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by this reference (“Repayment Contract”); and

WHEREAS, consistent with the provisions of the SJRRSA and other laws, the Repayment Contract includes provisions improving water management, including provisions expediting water transfers by the DISTRICT; and

WHEREAS, upon completing accelerated repayment of its allocated share of capital obligations required therein, the Repayment Contract provides that: (i) the DISTRICT is granted the permanent right to a stated share or quantity of water from the Project for beneficial use by the DISTRICT; (ii) its landholders will be relieved of the acreage limitation and full cost pricing provisions of Reclamation Law; and (iii) the DISTRICT will be relieved of tiered pricing provisions; and

**WHEREAS, the Repayment Contract requires that the DISTRICT provide the United States with a final decree of a court of competent jurisdiction of the State of California confirming the validity of the Repayment Contract; and**

**WHEREAS, the Board of Directors has reviewed the Repayment Contract and finds that conversion from the District's Existing Contract to the Repayment Contract is in the best interests of the DISTRICT and its landowners, and that the Repayment Contract should be executed in substantially the form attached as Exhibit A hereto, which execution shall occur upon the completion of proceedings necessary to validate the Repayment Contract; and**

**WHEREAS, federal law requires that the Repayment Obligation (as defined in the Repayment Contract) be determined according to the Treasury Rate (as defined in the Repayment Contract) on October 1, 2010 and that Exhibits C1, C2 and D of the Repayment Contract, which set forth the Repayment Obligation of the District, are based upon the current Treasury Rate and that adjustments to the Treasury Rate could occur before October 1, 2010; and any such adjustment will require corresponding adjustment of the Repayment Obligation currently described in Exhibits C1, C2 and D prior to execution of the Repayment Contract; and**

**NOW, THEREFORE, upon motion made by Director Tantau, seconded by Director Ritchie, and unanimously carried, the Board of Directors resolved all of the following:**

- 1. That it determines that the foregoing recitals and findings are true and correct, and that therefore it incorporate them herein by this reference; and**
- 2. That it approves and authorizes execution of the Repayment Contract by the President and Secretary in substantially the form attached hereto as**

Exhibit A, which execution shall be subject to and occur upon: (i) the successful completion of proceedings necessary to validate the Repayment Contract; and (ii) the final determination of the Treasury Rate on October 1, 2010 and the resulting final determination of the Repayment Obligation set forth in Exhibits C1, C2 and D of the Repayment Contract; and; and

3. That it authorizes and directs the DISTRICT'S legal counsel to initiate and prosecute a validation proceeding pursuant to California Code of Civil Procedure section 860, et seq., as necessary to confirm the validity of the Repayment Contract, and to do all things necessary and appropriate to prosecute said action; and
4. That it authorizes and directs the DISTRICT'S Secretary to provide certified copies of the foregoing resolution to the Bureau of Reclamation; and
5. That it authorizes and directs the DISTRICT'S officers, staff and consultants to take all additional actions they deem necessary or appropriate to facilitate the conversion to the Repayment Contract and obtain appropriate funding to satisfy the Repayment Obligation.

## CERTIFICATE OF RESOLUTION

I, Mark Larsen, hereby certify as follows:

1. That I am the Secretary of the Kaweah Delta Water Conservation District; and
2. That the foregoing resolution, consisting of 5 pages, including this page, is a true and correct copy of a resolution of the Board of Directors of the District passed at the meeting of the Board of Directors held on June 1, 2010, at the District's principal executive office, located at 2975 N. Farmersville Boulevard, Farmersville, California 93223.

IN WITNESS WHEREOF, I have signed this certificate this 9<sup>th</sup> day of November, 2010, at the District's principal executive office.

  
\_\_\_\_\_  
Mark Larsen, Secretary